



Bayan بیان ביאן The Arabs in Israel הערבים בישראל

Editors: Itamar Radai and Arik Rudnitzky

Issue no. 11, September 2017

Table of Contents

From the Editors' Desk	2
Iyad Zahalka / A Female Qadi Appointed in the Sharia Court: Religious Law and Public Opinion.....	3
Arik Rudnitzky / The National Stream and the Jewish State: A Picture of the Current Situation.....	11

From the Editors' Desk

We are pleased to present the September 2017 issue of *Bayan*. This issue contains two essays. The first, by Iyad Zahalka, discusses the recent appointment of a female qadi to the Shari'a Court in Israel and its implications. The second, by Arik Rudnitzky, portrays a picture of the current political discourse of the national stream in Israel's Arab society.

Bayan is an online quarterly on Arab society affairs in Israel, published by the Konrad Adenauer Program for Jewish-Arab Cooperation at the Moshe Dayan Center for Middle Eastern and African Studies at Tel Aviv University.

We invite our readers to contact us, through the following channels:

- The Konrad Adenauer Program for Jewish-Arab Cooperation:

Dr. Itamar Radai (Academic Director)

Tel.: 03-6406438

Fax: 03-6406046

E-mail: itamar.radai@nyu.edu

Arik Rudnitzky (Project Manager)

Tel. 03-6409991

- Moshe Dayan Center website : www.dayan.org.

© All rights reserved to the Konrad Adenauer Program of Jewish-Arab Cooperation, Tel Aviv University, 2017. Material may be photocopied for non-commercial use and quoted when properly cited, including source, editors, and place of publication. Reproduction of the publication is prohibited without permission from the editors.

The Konrad Adenauer Program for Jewish-Arab Cooperation (KAP) was established in 2004 by the German Konrad-Adenauer-Stiftung and Tel Aviv University as part of the Moshe Dayan Center for Middle Eastern and African Studies. KAP is an expansion of the Program on Arab Politics in Israel established by the Konrad-Adenauer-Stiftung and Tel Aviv University in 1995. The purpose of KAP is to deepen the knowledge and understanding of Jewish-Arab relations in Israel through conferences, public lectures and workshops, as well as research studies, publications and documentation.

Bayan is published in Hebrew and English. The essays included in *Bayan* reflect the opinions of their authors only.

We thank Ms. Chaya Benyamin for translating and editing the English edition.

The Editors

Iyad Zahalka * / A Female Qadi Appointed in the Sharia Court: Religious Law and Public Opinion **

In April of 2017, the Qadi selection committee of Israel's Sharia Court made a historic move: it appointed the first woman to the position of Qadi [religious judge].

The appointment of a woman to a judicial position in the religious court system is a particularly sensitive issue, especially in light of religious scholars' stance on this issue. Despite the modern legal and public norms that advocate gender equality, and the fact that all discrimination against women is considered a violation of public regulation, most clerics oppose the appointment of women to these positions. The issue has been discussed in different forums, including in bills and laws legislated by the Knesset. It has also been discussed more than once in the rulings of the Supreme Court and has sparked public debate. Naturally, it is an issue which arouses sensitivities.

There is divided opinion on the matter of the appointment of a woman to a judicial position in the Sharia Courts as well. For example, prior to this, there was a heated dispute regarding the appointment of a woman to the position of arbitrator in separation and divorce proceedings under section 130 of the Ottoman Family Rights Law. Nor is there consensus amongst Israel's Muslim public on the matter of female appointment to judicial posts, and the divide reflects the wandering religious and social moods of this public. Therefore, great significance is placed on the appointment of a female Qadi to the Sharia Courts.

In this article, I will discuss the religious, legal and public aspects of the appointment of a woman to the post of Qadi in the Sharia Courts, which doubtless constitutes a significant innovation in religious code. The article will describe the religious stances toward this issue and the stances of the Muslim public, which attest to (among other things) the changes of consciousness which has occurred within it. I will also review happenings in this field in other Islamic nations.

Opinions from Religious Authorities on the Appointment of a Woman to a Judicial Post

Among Muslim scholars, there is agreement regarding the qualifications required for a qadi - he must be mature, sane, Muslim, fair-minded, free, industrious, and without any blemishes. On the other hand, they disagree on the matter of a qadi's gender. The dispute stems from the varied exegeses of the Koranic verses and the Hadith of each of the four main Islamic schools: the Shafi'it, the Hanbali, the Malikite and the Hanafi. Not only this, but among each of the Islamic schools, there is debate amongst its scholars.

* **Dr. Iyad Zhalka** is a Qadi in the Shari'a Court of Appeals and Director of the Shari'a Courts in Israel. He lectures at Tel Aviv University, and is the author of numerous books in Arabic, Hebrew, and English on the subject of various aspects of Muslim Sharia Law.

** The author wishes to thank **Ms. Mayada Asfur**, an MA candidate at Tel Aviv University's Department of Women and Gender Studies, for her generous help in collecting materials.

It's important to highlight that the disputes between religious scholars are legitimate because the *fiqh*, Islamic jurisprudence, is the product of scholarly contemplation; it is meant to expand the knowledge of Sharia and represents the scholar's understanding of it. Therefore, it is unsurprising to find disagreements among religious schools of thought and their scholars in all that is related to the *fiqh* and religious code, which unlike Shari'a, is the divine law revealed in the Koran and through the Sunna of his prophet, Mohammad.

Most of the schools – the Malikite, the Shafi'it and the Hanbali – along with a distinguished sage of the Hanafi school, Zofar, ruled that it appointment of a woman to judgeship was prohibited. In their view, a woman's term as a judge would be null and void, her rulings having no legally binding validity.¹ This issue has been discussed in detail in the writings of authoritative and respected religious scholars such as Ibn Qudama, Imam al-Qurafi, and al-Fayruz Abadi.² In addition to the Sunni schools, the Shi'ite Ja'fari school strictly forbids women from holding judicial posts.

On the other hand, some adjudicators unrestrictedly allow for the appointment of women to the role of Qadi. These scholars believe that gender is not included in the conditions for judicial fitness, and indeed, the Andalusian sage Ibn Hazm al-Thaheri allowed for the female appointment to judicial positions.³ A similar opinion is attributed to the jurist Ibn Jarir al-Tabari;⁴ in his opinion, if a woman can serve as Mufti, then it is also allowable to let a woman serve as Qadi, because a Mufti presents religious opinion based on knowledge, consideration, and evaluation, and a Qadi also adjudicates according to them. If the appointment of a Mufti is not conditional on (male) gender, this should also not be a condition for appointing a Qadi.⁵ In general, the religious scholars who agree to the appointment of a woman to the role of Qadi base their claim on the absence of a prohibition in the Koran or in the Sunna regarding the appointment of a woman to a judicial position. However, it should be noted that there were scholars, including Abu Bakr bin al-Arabi⁶ and al-Qurtubi,⁷ who denied this stance's attribution to al-Tabari, and they claim that he opposed appointing women to judicial positions.

In contrast to the two forbidding and permissive opinions, the scholars of the Hanafi school of thought and Ibn Qassem of the Maliki school⁸ believed that it is permissible to appoint a woman to certain positions in certain areas. For example, they allowed the appointment of a female judge to matters on which she could serve as a witness, which is to say, on any matter, except *Hudud* (Penal Law) and *Qisas* (Criminal Law).⁹

According to an opinion of other Hanafi religious scholars, the appointment of a woman to a judicial position is prohibited, but if one is appointed, her rulings are

¹ For more on this see: "Badiyat al-Mu'tahd" (531/2), "al-Ma'ani" (350/11)

² For an extensive discussion on the topic see: "حكم تولي المرأة القضاء". السقياي، إبراهيم بن علي.

³ ابن حزم علي بن أحمد بن سعيد "المحلى" دار الأفاق الجديدة ج9 ص492.

⁴ تصحيح/محمود شكري الألويسي البغدادي. "روح المعاني في تفسير القرآن" أبي الفضل شهاب الدين السيد محمود الألويسي البغدادي. العظيم والسبع المثاني. جزء 19، صفحة 189، 2009.

⁵ الموسوي، علي فوزي. "حق المرأة في تولي منصب القاضي"، جامعة بغداد.

⁶ ابن العربي، أبو بكر بن محمد بن عبدالله "أحكام القرآن" دار الفكر ج3 ص457.

⁷ القرطبي، دار الشعب القرطبي "محمد بن أحمد الأنصاري" تفسير ج2 ص120.

⁸ ابن حزم علي بن أحمد بن سعيد "المحلى" دار الأفاق الجديدة ج9 ص429.

⁹ See: Al-Ahkam al-Salatania by Imam Abu Hassan al-Mawardi; "Fatah al-Bari" by Ibn Hajar; "Sharh Fath al-Qadir" by Ibn al-Hamam, as well as the jurisprudent Ibn Qaddamah and the jurisprudent al-Qasani. See also: "حكم تولي المرأة القضاء". السقياي، إبراهيم بن علي.

binding. These scholars explain that belonging to the male gender is a required qualification of a judge, but they differ on the validity of a judgments ruled by a female judge. They ruled that if a woman was appointed to a judicial position, her ruling is binding, even though her appointment to the position is prohibited in the first place, as long as ruling is based on Shari'a laws and as long as the ruling is not in the realm of criminal law or penal law; in these areas, she is neither entitled to judge nor to testify.¹⁰

The Appointment of Women to Judicial Posts in Sharia Courts or Sharia-dependent Courts in Muslim States

The division amongst religious scholars on the appointment of women to judicial positions influenced the positions adopted by Muslim states on the matter. Below, I will review the Palestinian Authority's position, along with positions from different states which allowed for female judicial appointments in Sharia Courts.

The Palestinian Authority (PA): The PA allowed women to be appointed as judges in the Sharia courts. In 2009, two Qadis were appointed - one in Ramallah and one in Hebron¹¹ – and thus, the Palestinian Authority adopted without reservation the position permitting the appointment of women to judicial positions.

Indonesia: At the end of the 1950s, the authorities decided to appoint women to positions in the judicial system, drawn from their interpretation of the Shafi'i school rulings, although Islamic groups claimed that the appointment of women to qadi was against Islamic Shari'a. The Shafi'i school is the most prevalent in Indonesia, and according to it the appointment of women is allowable in cases that demand it. Accordingly, the Ministry of Religious Affairs determined that the appointment of a woman qadi did not constitute a threat to any vital interest whatsoever. Moreover, due to the lack of qualified qadis that meet the requirements of the Ministry of Religious Affairs, it is permissible to appoint women to the position. In 1964 the first female qadis were appointed to the Sharia courts, most in part-time positions and one full-time. Only in 1989 did the state formally anchor the right of women to hold this role. The Law of Administration of Religious Adjudication determines what qualifications are required of a qadi, for example, a bachelor's degree in Law and Islamic Law. The rate of female qadis in the Shari'a courts in Indonesia stood around 15% of all qadis in 2011, and women even head Shari'a courts across the country.¹²

Malaysia: In 2003, the Malaysian government decided to appoint female qadis to the Shari's courts although women had been appointed as judges in civil courts since the 1960s (the Malaysian judicial system consist of civil courts and Shari's courts). Afterward, a controversy arose regarding the authority of female qadis on certain issues, even though in 2006 the National Fatwa

¹⁰ This was the view of the religious scholar Ibn Najeem and the jurispudent al-Haskafi in his books *al-Dar al-Makhtar* and *Jama al-Anhar*.

¹¹ OECD, *Women in Public Life: Gender, Law and Policy in the Middle East and North Africa*, 2014, p. 142, <https://www.oecd.org/mena/governance/women-in-public-life-mena-brochure.pdf>

¹² Rada Hasasi, *Appointment of Kadis in Sharia Courts Background and Situation in Several Countries*, Jerusalem: The Knesset - Research and Information Center, 2015.

Council of Malaysia ruled that qualified women could serve as religious judges. In the end, it was decided that the authority of female qadis would be identical to that of male qadis.¹³

Pakistan: Pakistan is considered an extremely conservative country. It subscribes to the Hanafi school of Islam in a strict manner, and in spite of this, in the end of 2013 it was decided to appoint the first woman to the position of qadi to the state's High Shari's Court.¹⁴

Sudan: The legal system in Sudan includes civil courts and religious Shari's courts. The state's laws in the realm of marriage were based on Islamic Shari'a, and already in 1970 the chief qadi of the Shari'a Courts was had appointed a woman to the position of Qadi. In 1987 four women held judicial positions in Sudan.¹⁵

Egypt: After the Free Officers' Revolt in 1955, Gamal Abd al-Nasser decided to abolish the institution of the Shari'a courts which had functioned since the Ottoman era. From the same year, cases in the realm of personal status were discussed in civil courts or in family courts, and citizens of all religions were judged within them.¹⁶ In the year 2000, President Hosni Mubarak ordered the appointment of a female judge to a court which had no dealings with civil or criminal cases. In 2007, he appointed 31 female judges to family courts. These appointments of women judges are equivalent to the appointment of female qadis in in Shari'a courts because in both courts they adjudicate matters of personal status whose laws are drawn from Islamic Shari'a. As in the rest of the Muslim world, there is also controversy regarding the appointment of female judges in Egypt. For example, as early as 1952, the council of Al-Azhar University, the most prestigious learning institution for Shari'a law, issued a fatwa that it was forbidden to appoint women to judicial positions, and the matter was not open for discussion.¹⁷

Iran: Iran is defined as an Islamic republic with a Shi'ite Muslim majority and its laws are based on the Jabari school of thought. Islamic Shari'a is the core of all legislation pertaining to every facet of life, even though none of its courts are classified as a "Shari'a court." In addition to Shari'a laws Iran has civil laws which include matters of personal status. Until 1979, women in Iran were appointed to senior positions, including judgeships, but this became a rarity after the Islamic Revolution. In 1982, a law was passed declaring that only men could hold judgeships in Iran's courts. As part of an amendment to this law, which was passed in 1985, women were allowed to serve as advisors in civil courts and in the ministry responsible for juveniles. Part of another amendment, which passed in 1995 allowed female lawyers to occupy positions as advisors to judges in marital and family courts, and required judges to

¹³ N. Noriani, N. Badlishah & Y. Masidi, *Women as Judges*, Malaysia: Sisters in Islam, 2002, http://www.sistersinislam.org.my/files/downloads/women_as_judges_final.pdf

¹⁴ United States Department of State, *Country Reports on Human Rights Practices for 2013: Pakistan 2013 Human Rights Report*, <https://www.state.gov/documents/organization/220614.pdf>

¹⁵ Carolyn Fluehr-Lobban, *Islamic Law and Society in the Sudan*, London: Frank Cass, 1987

¹⁶ E. Abdelkader, "To Judge or Not to Judge: A Comparative Analysis of Islam Jurisprudential Approaches to Female Judges in the Muslim World (Indonesia' Egypt and Iran)", *Fordham International Law Journal* 37/2 (2014), pp. 307-372, <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2329&context=ilj>

¹⁷ Ibid

consult with female advisors before issuing a sentence. In 1998, it was decided to establish courts for family issues, and they replaced the general courts in judging such matters.¹⁸

The Appointment of a Woman Qadi to the Sharia Courts in Israel

Shari'a courts in Israel are an institution for religious adjudication rooted in rule of the Ottoman Empire. The Shari'a courts were used as courts of the state and subscribed to the Hanafi school, which was binding throughout the empire. The British Mandate authorities, which took power in the region after the defeat of the Ottoman Empire in the First World War, enacted the "Palestine Order-in-Council, 1922-1947." According to the provisions of this legislation, the Mandate authorities adopted the institution of the Shari'a courts and the Ottoman laws, based mostly on the principles of the Hanafi school. The state of Israel also adopted the Shari'a courts and Ottoman legislation on personal status, through the Ordinance for Administration and Law, 1948.

According to Article 52 of the above-mentioned King's Law, Shari'a courts in Israel are authorized to deal with personal status issues of Muslims in matters such as marriage, divorce, child support, guardianship, paternity and custody of children. They are also authorized to discuss *waqf* (Islamic endowments), inheritance, religious conversion to Islam, prevention of domestic violence and more.¹⁹ Today, nine Sharia courts are active in Israel: in Jerusalem, Be'er Sheva, Yafo, Akko, Nazareth, Tiberius, Haifa, Baqa al-Gharbia, in Sakhnin (under construction), and the Shari'a Court of Appeals in Jerusalem.

The selection of qadis to the Shari'a courts has been performed under the Law of the Qadis of 1961.²⁰ The law, in its various versions, did not include gender in the qualifications for a qadi's tenure, and therefore did not relate to the appointment of a woman to the position, either in the positive or the negative. Therefore, as long as there is no prohibition against appointing female qadi, the implication is that it is permitted. Indeed, for many years, women have applied for the post of qadi, but have not been selected. In 2013, it was agreed between the then president of the Shari'a court of appeals and the manager of the Shari'a courts and then-Justice Minister, Tzippi Livni, to work toward the appointment of a woman.²¹

At the end of 2015, Knesset member Issawi Freih proposed a law to require representation of at least one female nominee for each qadi position, though the proposition failed. The Shari'a courts opposed the appointment of a woman, and Jewish religious political parties also strongly objected; for example, the ultra-Orthodox United Torah Judaism threatened to use its veto-power in matters of religion and state to thwart the bill. The main reason for this opposition is the fear of the influence of legislation of that kind on the religious Jewish population, which would be likely create a precedent for the appointment of women in rabbinical courts.²²

¹⁸ Rada Hasasi (note 12 above).

¹⁹ The Ministry of Justice, Sharia Courts, <http://www.justice.gov.il/Units/BatiDinHashreim/ContactUs/Pages/Default.aspx>

²⁰ *The Qadi Law*, 1961. Another law regarding the appointment of Qadis is the Shari'a Courts' Law of 1953/5714 (Appointment Approval), 5714-1953.

²¹ Rada Hasasi (note 12 above).

²² See: Sharon Polver, Yair Ettinger and Jacky Khoury, "The Qadim Selection Committee Elects First Woman Qadi", *Ha'aretz*, April 25, 2017 <https://www.haaretz.co.il/news/law/1.4041725>

The honorable Abd al-Hakim Samara, then acting president of the Sharia Court of Appeals in January 2016, and today the president of the Shari'a Court of Appeals, saw that there are rulings in Muslim law that allow a woman to be appointed in a judicial capacity, especially in the Hanafi school, which binds the Sharia courts. Therefore, Qadi Samara agreed to appoint a woman as a qadi. Qadi Samara's position enabled the members of the selection committee to positively consider the appointment of a woman to a judicial post.

In April 2017, for the first time in Israel, a committee appointed by Justice Minister, Ayelet Shaked, appointed a woman to serve as a qadi - Hana Khatib, an attorney specializing in Shari'a law and marriage law.²³ On May 15, 2017, an oath ceremony was held at the President's Residence for the inauguration of new qadis, and on this historic occasion, the first woman qadi was sworn in.

Among the Arab public of Israel, the decision to appoint a female qadi was received with mixed feelings. There were some who welcomed the decision and felt it correct in terms of religious protocols; there were those who supported it on grounds of public policy and the need to advance women's stature; and some supported the decision on Feminist grounds. On the other hand, there were those who opposed the decision because they deemed it forbidden by Muslim law, and some opposed it because they viewed the appointment as a violation of the tradition and customs of Arab society. The storms rumbled and raged through social networks and in responses to articles published on the Internet. At times, the heated debates ended in verbal abuse.

The Shari'a courts in Israel supported and welcomed the historic step of appointing a female qadi. Although they recognized the religious dispute on this issue, they published a statement explaining that the decision was based on a fatwa issued by the religious scholars of the Hanafi and Thaheri schools and by Ibn Jareer al-Tabari, who permitted the appointment of a woman to the post of qadi.²⁴

On May 7, 2017, the Qadis of the Israeli Shari'a Courts published a proclamation, which stated that in spite of the theological dispute on the matter, the opinion of the Shari'a Courts was that it is possible to appoint a woman to the position of qadi. The proclamation based the decision on doctrine and highlighted that the decision was derived from the work of distinguished religious authorities. The proclamation also condemned any statement which undermined the legitimacy of the decision and expressed full support for the president of the Court of Appeals and for the courts' director, who were both members on the selection committee for qadis.²⁵

Sheikh Hamad Abu Da'abis, chairman of the southern branch of the Islamic Movement in Israel, adopted the position that allows for fit and qualified women to hold qadi positions in recognition of the important standing of women in Islam, and he called upon other Arab and Muslim states to allow women to occupy this position. Sheikh Kamil Rayan, a senior leader in the southern branch of the Islamic movement, joined Abu Da'abis in this position, but acknowledged the varied theological opinions of religious scholars on the subject and the ongoing debate in relation to the

²³ Ibid

²⁴ See: صادر عن مؤسسة المحاكم الشرعية بيان

²⁵ See: بيان صادر عن قضاة الشرع الحنيف في البلاد

appointment of women to the position of qadi.²⁶ The Knesset member of the southern branch also welcomed female judgeships.

Arab feminist organizations also expressed their support for the appointment, recognizing the importance of appointing a woman to the role of qadi in family and Shari'a courts in Israel.²⁷ For example, the feminist organization, Kayan, welcomed the appointment and called for the appointment of additional female qadis. In their opinion, women should be allowed to be selected for the same positions as men in order to reduce the discrimination that they suffer.²⁸

Women and men of the political arena serving in the Knesset, MK Issawi Frej among them, also praised the decision. MK Aida Touma Suleiman, chair of the parliamentary committee for the advancement of women, emphasized the importance of the measure, and described it as "a historic step in the feminist struggle toward the advancement of Arab women to decision-making and leadership positions."²⁹

On the other hand, Dr. Mashour Fawaz objected to the appointment; in his view, a woman has no authority to hold such a position. Dr. Mashour is the director of the Muslim Council for Religious Ruling, an organization established by the northern branch of the Islamic movement, which deals with religious rulings for Muslims in Israel on various matters. Its members are graduates of Shari'a studies at universities in Israel and abroad. Dr. Mashour went as far as to criticize the religious authorities from the Hanafi school to whom the fatwa allowing for the appointment of women to qadi is ascribed. He claims that the Hanafi school forbid the appointment of women to qadi, and only Ibn Hazm explicitly permitted it. This position contradicts a previous fatwa issued in 2009, in which it was ruled that authorized women could hold judicial positions.³⁰ In Mashour's opinion, the Hanafi school's position on the subject is unclear, so much so that the clerics themselves became confused.³¹

Sheikh Kamal Khatib, deputy director of the northern branch of the Islamic Movement (until it was outlawed), sharply criticized the committee's decision to appoint a woman to the position of qadi in the Sharia court, and supported the view that Islamic Shari'a forbids it. According to him, the appointment of a female qadi is nothing but a political deal carried out in the Sharia court system. He even cast the authority of the members of the selection committee.³²

Conclusion

The appointment of a woman to the role of qadi is not a routine appointment in the Shari'a courts. Without any connection to the identity of the woman chosen for the

²⁶ See article posted on the website Baladna, "لائمة مساجد ومشايخ: لا يجوز تولي امرأة منصب قضائي," April 27, 2017.

²⁷ Noriani, Badlishah & Masidi (From note 13 above).

²⁸ See an article published on Al-Jazeera on May 19, 2017: <http://www.aljazeera.net/news/reportsandinterviews/2017/5/1>

²⁹ Ibid.

³⁰ See the article from Baladna (note 26 above)

³¹ See the announcement published on April 29, 2017 on the official Facebook page of Dr. Mashour Fawaz, "الشيخ د. مشهور فواز الشافعي رئيس المجلس الاسلامي في الداخل الفلسطيني".

³² See Hassan Shaalan, "Muslim clerics spurn first female appointment as qadi." *Ynetnews.com*, April 27, 2017

<https://www.ynetnews.com/articles/0.7340.L-4954490.00.html>

position, the appointment conveys that the Shari'a and Islamic Law are a progressive and enlightened legal system that can properly deal with the varied circumstances in order to realize public good. The move reflects an open theological worldview on the part of the Shari'a courts' leadership in managing modernity and its challenges. The appointment points to changes in the views of Muslim society in Israel; in spite of the troubles that arose from the appointment, many in this public believed that the move was correct from both a religious and social standpoint, and accepted despite the opposition of the aforementioned parties. There is no doubt that the appointment was a historic step, and the Shari'a court system in Israel leads in this line along with other Shari'a courts in other states across the Muslim world, and with the neighboring Palestinian Authority.

Arik Rudnitzky * / The National Stream and the Jewish State: A Picture of the Current Situation

For more than a decade, Israel has sought to anchor its definition as a "Jewish state." The issue arose from the outset of the negotiations between Israel and the Palestinian Authority, and culminated in the Israeli government's demand that the Palestinians recognize Israel as a "Jewish state" within the framework of a permanent arrangement between the parties. While the Palestinian Authority has so far received the demand with relative indifference, as revealed in its statement "Let Israel define itself as it wishes," the voice of the Arab public in Israel has been firm and consistent in its criticism of the matter.³³

The Arab public is not made up of a single political and ideological unit, and therefore, there is no consensus vis-à-vis the definition of a "Jewish state." Of all the active political streams in Israel's Arab public, the national stream is in direct confrontation with the very notion of a "Jewish state." In principle, its members do not take for granted the idea of self-determination for Jews in the Land of Israel. Nor do they accept the situation in which the Palestinian people are split between "the Palestinians of 1948," "the Palestinians of 1967," and Palestinian refugees. They believe that ultimately all Palestinian people must unite in one political framework in historic Palestine. However, on a practical level, members of the nationalist stream recognize the right of Jews living in Israel today to self-determination, though they limit its application to "Israeli Jews" alone (i.e., not to Jews in the Diaspora).

In recent years, the national stream has been undergoing a process of political transformation under the influence of political processes in the Palestinian arena and in the Middle East as a whole. The crisis that's befallen the Palestinian national movement is reflected in the absence of a clear Palestinian national vision following the collapse of the two-state solution between Israel and the Palestinians. The conclusion of the national stream is that the "Palestinians of 1948," who found themselves in a situation of "double periphery" owing to the Oslo Accords (1993) - that is, on the margins of the Palestinian national movement *and* on the margins of Israeli citizenship - have recovered from the crisis that visited them, reorganized, and became the pyre in a nationwide issue. To this we must add the influence of the events of the "Arab Spring" at the beginning of the current decade.

The collapse of regimes in neighboring Arab countries following the protests of the masses, fed by slogans such as "the will of the nations" (*Eradat al-Shu'ub*) or "victory to the nations" (*Al-Nasr Lilshu'ub*), exemplified the power of a united public to bring about revolutionary change. All this leads the national stream to adopt a more proactive approach than in the past. This trend is reflected on the ideological level in the discussion of the national stream's worldview, and at the practical level, by presenting proposals for the realization of that worldview.

A recent discussion of the worldview of the nationalist stream appears in an article recently written by Dr. Bassel Ghattas, who until recently served as a member of the

* **Arik Rudnitzky** is PhD candidate and serves as Project Manager at the Konrad Adenauer Program for Jewish-Arab Cooperation, Moshe Dayan Center, Tel Aviv University.

³³ Arik Rudnitzky, *The Arab Minority in Israel and the Discourse on "The Jewish State"* (Jerusalem: Israel Democracy Institute, 2015) [Hebrew].

Knesset with the Balad party.³⁴ His point of departure is that the Arab minority suffers from discrimination and exclusion because it is part of the indigenous Palestinian people suffering from Israel's colonial occupation. For this reason, Ghattas believes the time has now come to develop a "project for the liberation of the Palestinian Arabs 'inside' from the ongoing colonialism." Ghattas raises some fundamental rhetorical questions in order to clarify the project's strategic goal and vision:

“What do we, the Palestinians ‘inside,’ really want and what is our project? Do we want a liberation project in order to be rid of the colonial occupation, or only to improve our living conditions within its framework? [...] Will we accept the way in which the occupier shapes our connection to our homeland, in a way that completely denies this connection, and turns Palestine into a new colonial geography that reflects the control and narrative of the colonist and the defeat of the original people's narrative? Must we accept this reality and accustom ourselves to this hidden geography, or do we want to return to the homeland, in a physical and mental sense, and return to it as masters, the rightful and original owners of this land?”

Ghattas explains that at the heart of the discourse of liberation from the occupation are the indisputable rights of the land's original people of and their historical narrative. He calls for adoption of an outlook of liberation, one that rejects the existing reality and expresses of willingness to affect a fundamental revolutionary change.

Ghattas moves from principle to the practical, recalling that from the outset the Balad party's "State of Citizens" project - that is, a state that delivers full equality to all its citizens- and the idea of cultural autonomy developed in the wake of the Oslo Accords. The spirit of the times was marked by signs of a solution for peace between the sides, based on the establishment of a Palestinian state in the 1967 territories and a just solution to the Palestinian refugee problem. It should be noted that Azmi Bishara, the founder of Balad and the thinker behind the "State of Citizens," argued in the 1990s that the framework of cultural autonomy would enable Arab citizens to cultivate Palestinian national identity within the framework of Israeli politics without assimilating into the country's Hebrew culture.³⁵ Today, Ghattas contends that Balad's project proposes a just democratic solution for Arabs and Jews because it gives both groups full equality, equal citizenship, and allows each group the right to self-determination independently. Ghattas opines that as long as Israel exists as an invader state that is out of compliance with international law, there is no significance to Jewish-Arab partnership. Instead of leading to the establishment of a Palestinian state, the Oslo Accords effectively increased settlement activity, divided the West Bank and Gaza Strip, and Judaized Jerusalem. Therefore, Ghattas concludes, the time has come to rebuild the Palestinian national liberation project. This task rests on the shoulders of all Palestinians, everywhere, and at this point "this segment of the Palestinian people" - that is, the Arab minority in Israel - will play an important role in rebuilding the national project and in inter-Palestinian discourse.

³⁴ Dr. Bassel Ghattas, "Qira'ah fi waqi' filastiniyi al-dakhil wa-darurat tajdid al-mashru' al-watani" ("An analysis of the reality of the "Palestinians inside" and the need to renew the national project"). *Arab48.com* website, 25 March 2017. Link to article: <http://bit.ly/2sHwIK6> [Arabic]

³⁵ Azmi Bishara, "The Arab in Israel: A Study in a Splitted Political Debate," in: Avi Bareli and Pinhas Ginossar (Editors), *Zionism: Contemporary Polemics – Research Approaches and Ideologies* (Ben Gurion University of the Negev: The Ben Gurion Heritage Center, 1996), pp. 312-339. [Hebrew]

A substantive part of Ghattas' discussion deals with the connection between the general national project and the daily problems that preoccupy the Arab public: housing, education, violence in Arab society, house demolitions, employment and improving the standard of living. He draws an organic connection between the general concept of the liberation project and the demand for civil rights. His words clearly echo the discourse of the rights of indigenous peoples.³⁶ One of the salient features in the discourse of "indigenous rights" is based on indigenous people's claim to their internal value system – that is, to what appears to them to be just, correct, and moral according to their perception. These rights are not necessarily derived from the laws of the country in which they live. Ghattas writes:

"We want an improvement in our living conditions because we have these rights and we are the sons of this homeland. We want housing and infrastructure because we are in need of them, and because these are our rights as people and as masters of their homeland, and it is not a kindness from any person. We want better schools, we want a better education system, and we want to run them because we have the rights of people and the rights of owners. We want Arab universities and research institutions because we have the rights of native sons in their land, and no man has more right than us on this matter. And at the same time, we want to return to our destroyed villages, and return to our expropriated lands, and to build new cities and settlements for ourselves. This is the discourse of the country's original people."

Ghattas concludes that the discourse of the land's original people is not supposed to be soft and refined. However, he urges against adoption of any violent revolutionary approach, since there are a variety of peaceful civilian strategies for achieving the goal. But first, he stresses, the Arab public must "behave as an original people with a project."

The spirit of the "national project" also characterizes the positions of other senior members of the national stream. Awad 'Abd al-Fattah, formerly secretary-general of the Balad party and a member of the "Sons of the Village" (*Abnaa' al-Balad*) nationalist movement before that, believes that in the absence of a solution to the conflict in the foreseeable future, every segment of the Palestinian nation must adopt a project particular to that segment which will ensure its safety.³⁷ In the case of the Palestinians in Israel, the national project must be manifested in the reorganization of the Supreme Follow-up Committee, and its transformation into an elected institution of the Arab public. All parties, local authorities, and communal and professional organizations will come under the supervision of the Follow-up committee, and direct elections for the committee should be held thereafter. The Follow-up Committee, al-Fattah posits, should be a collective national framework that will be a source of constitutional and moral authority - a kind of "social covenant" – for the Arab public's leadership. In his opinion, this is a basic prerequisite for protecting the existence of

³⁶ For discussion on "indigenous rights," see: Duncan Ivison, "Indigenous Rights," in: William A. Darity (ed.), *International Encyclopedia of the Social Sciences*, Farmington Hills: MacMillan (2), 2007, pp. 614–617.

³⁷ Awad 'Abd al-Fattah, "Filastiniyu Al-48 - Jardat Hisab wal-Din al-Mu'allaq" ("The Palestinians of 1948: Account and the Hanging Debt"), *Arab48.com website*, March 25, 2017. Link to article: <http://bit.ly/2sMfMSL> [Arabic]

the Arab public as a national collective against the tyranny of the ruling majority in Israel.

Abd al-Fattah emphasizes that the right of the Arab minority to establish national institutions of its own is anchored in international law, as part of the right of self-determination. In theory, the right of a minority to self-determination may take several forms, such as separation and the establishment of an independent state, territorial autonomy or cultural autonomy.³⁸ From the outset, members of the nationalist stream rejected the idea of territorial autonomy because of its impotence (geographically speaking), and especially because of worry that the state would see itself as completely exempt from dealing with the affairs of the Arab public. Abd al-Fattah does not deviate from this precept. He points out that the majority of Arab political, academic and intellectual authorities believe that cultural autonomy is the correct solution. In his opinion, although “the Palestinians inside the green line” have come a long way in the establishment of cultural institutions, the absence of a collective political vision prevented the realization of cultural autonomy. The reorganization of the Follow-up Committee may therefore advance it substantially.

How do Balad's people deal with legislative initiatives such as the "National Law" which emphasize the Jewish character of the state? Dr. Amtanes Shehadeh, secretary general of Balad, presents two ways.³⁹ One way is to formulate a collective political platform that is agreed upon by the parties and the political movements in the Arab public, which will clarify the Arab public's position on the Zionist project and delineate its effects on Palestinian society in Israel. Such a platform would stand in opposition to the Zionist colonial project, as Shehadeh puts it, and would ensure the collective rights of all groups in Israeli society. Shehadeh's intention is to present an initiative from the Arab public and lay it on the table of Jewish citizens, and not to wait for suggestions from Israeli authorities, which by their nature place limits on the political demands of the Arab public.

Another option Shehadeh proposes is to strengthen unified parliamentary activities and to strengthen the power of the Joint List. According to Shehadeh, until the 2015 Knesset elections, voter turnout in the Arab public had been 55 percent on average, with some boycotting the election for ideological reasons and others abstaining due to indifference. Either way, Shehadeh emphasizes that the boycotts had no political effect. Today, he recommends reversing this trend by encouraging the Arab public to participate in election in order to achieve voter turnout of 70 percent. He is convinced that not only will it produce a positive political influence, but also that such a move would convince Israel that it cannot be “a nation-state exclusively for the Jews.”

In conclusion, the discourse of the members of the national stream emphasizes the fact that the Arab minority is an indigenous minority and strengthens its perception that the state is the fruit of a colonization process on their land. The research literature documents a series of cases of nation-states in Asia and Africa where tension exists between a minority group that sees itself as original and a majority group that is not perceived as original in the minority's eyes. At its core, this is a conflict over social and economic resources such as land, employment, education, and services provided by the government. The intensity of the conflict increases when, on the one hand,

³⁸ For further details, see Ruth Lapidot, "Autonomy," *Law and Government* 1 (1992), pp. 37-79.

³⁹ Amtanes Shehadeh, “Musahamah fi subul al-Tasaddi li-Qanun al-Qawmiyah” (“Contribution to the discussion of ways to oppose the national law”), *Arab48.com website*, May 12, 2017. Link to article: <http://bit.ly/2seCBkk> [Arabic]

there is a process of modernization, development, and an increase in the level of education that increases the minority's expectations of equality, but on the other hand the government (in the eyes of the minority) does not serve as a fair broker for the distribution of the country's resources. It is from these influences that the concept of "sons of the soil" grew: the members of the minority group adopt for themselves the nickname "sons of the soil" to express their collective right to the territory in which they live. They emphasize that they are indigenous people and add legitimacy to their demand that the government give them priority in the distribution of resources within their territory. The conclusion that emerges from the literature is that the indigenous minority adopts political tools to address the chasm between its level of socioeconomic development and the majority group.⁴⁰

These conclusions are also applicable in the case of the Arab minority in Israel, and even more specifically in the story of the national stream. In fact, one of the factors that contributed to its rise in Arab society during the 1970s was the discrepancy in the level of economic development between Jewish and Arab communities. At first, members of the national stream volunteered for municipal level activity as a basis for emphasizing their authenticity and as a political path for remedying the maladies of Arab communities. In the 1980s, the question of participation in the Knesset elections created internal divisions and polarizations among them. However, for the past two decades (since 1996) members of the Balad party have decided to participate in parliamentary politics, and they continue to adhere to the parliamentary option. Their intensive preoccupation with the rights to which the Arab public is entitled as an indigenous minority, the promotion of the idea of cultural autonomy within the state, and the discussion of the rights to which the Jewish majority is entitled (according to their view) – all make clear that the "indigenous discourse" they promote is not intended to undermine the existing political framework, but to obtain substantive equality within it.

⁴⁰ See: Myron Weiner, *Sons of the Soil: Migration and Ethnic Conflict in India* (Princeton, NJ: Princeton University Press, 1978); Morten Boas, "'New' Nationalism and Autochthony: Tales of Origin as Political Cleavage", *Africa Spectrum*, 1 (2009), pp. 19-38; James D. Fearon and David D. Laitin, "Sons of the Soil, Migrants, and Civil War", *World Development*, 39/2 (2011), pp. 199-211.