



Effective Participation and the Palestinian Minority in Israel

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Abstract

Effective participation of national minorities in public life is an “essential component of a peaceful and democratic society.”¹ The concept intends to promote participation among minorities in public life and to fulfill states’ obligation to protect minority rights as required by international human rights treaties and regional conventions. The same principle suggests that no nation or person possesses rights that are superior to those of another nation or person, and that it is essential to ensure the personal liberty and economic and social rights of every individual for freedom, equality and justice. Ensuring such rights demands protection from discrimination, persecution, protection and promotion of identity and, inter alia, contains positive obligations on state parties to afford effective participation in public life, in order to enable minorities to maintain their own identity and characteristics².

The Palestinian minority in Israel must be able to participate effectively both in term of the opportunity to make substantive contributions to decision-making processes as well as in terms of the effect of those contributions. However, this work argues that excessive discriminatory laws and policies toward the Palestinian minority in Israel make effective participation irrelevant. Their transformation from an indigenous majority community into a minority living in its historic homeland with a hostile and all-encompassing Israeli-Palestinian conflict resulted in extreme structural discrimination policies and national oppression, with far-reaching implications.

Through the lens of the experience of the Palestinian minority in Israel, this research defines and explains the principle of equality as a norm recognized in general international law and the concept of effective participation. In addition, the research will examine the dichotomy between minority rights and the concept of democracy when implementing laws and policies. Finally, this work proposes that mechanisms such as minority veto could generate the opportunities for consultation and participation³ so essential and so lacking for the Palestinian minority in Israel.

¹“The Lund Recommendations on the Effective Participation of National Minorities, 1999,” *International Journal on Minority & Group Rights* 16, no. 4 (December 2009): 689–694.

²*Ibid.*, 7.

³Marc Weller, *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies* (Oxford University Press, USA, 2008), 479.

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Introduction

Substantial academic work has been done related to the Israeli-Palestinian conflict. Much of the scholarship seems to be interested, in general, on the elusive nature of the intractable conflict. Literature has focused on the conflict in several dimensions: political, historical, philosophical and even psychological,⁴ all combined with a methodology explaining the factors that keep the flames of the conflict ongoing. These well-known researches focusing on Palestinian collective rights for self-determination and the struggle for statehood left underexplored a vital aspect involving the national Palestinian minority living within Israeli borders; a minority that transitioned from an indigenous-majority population to a disenfranchised and marginalized minority living in Israel since 1948.

Beginning in 1993, after the Oslo Accord, there has been a significant increase in articles, books and studies focusing on the Palestinians inside Israel⁵. The recent work of the historian Ilan Pappé and his book “Forgotten Palestinians,”⁶ stands out as an exemplary of this stillemerging interest in studying the status of Palestinians inside Israel⁷ and documenting their political, social, economic and cultural marginalization. Because the Palestinian struggle for freedom and liberation is still the

⁴ Daniel Bar-Tal, *Intergroup Conflicts and Their Resolution: A Social Psychological Perspective*, 1st ed. (Psychology Press, 2010).

⁵ See David Kretzmer, *The Legal Status of the Arabs in Israel* (Westview Press, 1990), and also Ian Lustick, *Arabs in the Jewish State: Israel's Control of a National Minority*, Modern Middle East Series (Austin, Tex.): No. 6 (Austin: University of Texas Press, c1980)

⁶ Ilan Pappé, *The Forgotten Palestinians: A History of the Palestinians in Israel* (Yale University Press, 2011).

⁷ There is much terminology used to refer to Palestinian citizens inside Israel such as “Arab citizens inside Israel,” “Israeli Palestinian citizens,” and “Arab Israelis”. This research will use these terminologies interchangeably.

key interest of the international community, inter-governmental bodies and the media (as made clear by the recent bid for upgrading the status of the Palestinian Liberation Organization (PLO) at the UN), most academic legal work and literature remains focused on the international humanitarian and human rights (including the right to self-determination) of the Palestinian people as a nation. Yet scholars are beginning to appreciate that the scope of the Israeli-Palestinian conflict cannot be fully understood without a comprehensive analysis of the rights of Palestinians citizens of Israel; those some 160,000 individuals who remained on their own land in 1948, and now number 1.4 million, or 20% of the population of Israel.

An examination of the status of the Palestinian citizens in Israel as a national minority in the Jewish state and to what extent they have achieved equal and basic rights enshrined in international human rights law, provides critical insight into the core of the conflict. As such, it is imperative to conduct this research of this unique minority who have suffered from extreme structural discrimination and policies, including military rule that lasted till 1966, land confiscation policy, unequal allocation of budget and resources, societal discrimination and threats of transfer⁸, and to assess the tools available to challenge this national oppression. While some literature has explored discriminatory laws and policies regarding minorities, there is little research concerning effective participation of minorities in public life. This newly established concept is applied to the unique structure and character of the Palestinian minority in Israel and is the center of this thesis and study.

This research argues that the definition of Israel as a 'Jewish state' under the Declaration of Independence, the Basic Laws, many other legislations and

⁸Pappe, *The Forgotten Palestinians*.

policies makes discrimination a deeply rooted reality for Palestinian citizens in Israel⁹. Despite their Israeli citizenship, Palestinian citizens are considered by the state as part of the larger Palestinian people making them a potential “security” and “demographic” threat toward the Jewish majority¹⁰. As a result of this perception, the Palestinian citizens in Israel gain low access in all public spheres and thus limited participatory levels. Their institutional marginalization and limited access to major administrative functions, with permanent inability to contribute and affect policies, laws and other administrative processes perpetuate their status as second-class citizens and deny them meaningful redress to the inequality and discrimination they face.

The present work will address the indispensable mechanism of effective participation as a vital tool towards eliminating discrimination and promoting the cultural, political and social rights of Palestinian citizens of Israel as a minority in public life. Such a mechanism, which relies on democratic precepts such as the rule of law as well as the principle of participation inspired by John Rawls *theory of justice*¹¹, ensure that the rights of the minority are adequately protected from coercion of majoritarian power. Effective participation can transform a largely invisible minority into a more active and dynamic minority¹² despite de-facto and de-jure discrimination.

⁹Fox Jonathan and Rynhold Jonathan, “A Jewish and Democratic State? Comparing Government Involvement in Religion in Israel with Other Democracies,” *Bar Ilan University* 9, no. 4, *Totalitarian Movements and Political Religions* (December 2008): 507–531.

¹⁰ A vulnerable state that was dependent on the Jewish immigrants for its existence, much literature emphasizes the ongoing demographical threat of the Arab minority toward the Jewish population in Israel.

¹¹ Wojciech Sadurski, *Equality and Legitimacy* (Oxford University Press, USA, 2008), 77.

¹² Nadim N. Rouhana ‘Palestinian Citizens in an Ethnic Jewish State: Identities in Conflict, Yale University Press, New Haven, 1997.

The efforts of the Palestinian citizens of Israel in realizing their human rights, through activism, academia, advocacy and politics, has an important impact on the larger Palestinian struggle. As Pappé argues, “their [Palestinian citizens of Israel] past struggles, present-day situation, and hopes and fears for the future intimately linked with those of the wider Palestinian population”¹³. Significantly, exploring the treatment of Palestinian citizens is vital to assessing the ability of, and way in which, Israel “deals” with Palestinians as a whole; an assessment that informs our understanding the necessary elements of a peaceful resolution to the Israeli-Palestinian conflict¹⁴.

Though much of this analysis is forward looking, it is important to begin with a historical background on the creation of the Palestinian minority starting with its historical identity during the British Mandate as part of larger body-politic and its transition from a majority in historic Palestine to a minority which survived the war of 1948 and has become integral part of the Jewish state.

¹³Pappé, *The Forgotten Palestinians*, 10.

¹⁴*Ibid.*, 11.

History of the Palestinians in Israel

“Palestina A,” so called by the British mandatory authorities for the local indigenous Arab people inhabiting Palestine, was established by the League of Nations in 1922, giving the British Empire the power to rule the southern part of Ottoman-Syria – known as Palestine – from 1923-1948¹⁵. Throughout this period, two communities were struggling for their self-determination and independence. Historians agree that the Balfour Declaration of 1917¹⁶ represents the starting point of the clash between the indigenous Palestinian Arab local community and largely settler Jewish Zionist community.¹⁷ Most Israeli historians assert that a national Palestinian identity did not exist before 1917,¹⁸ however, it has been persuasively argued by Rashid Khalidi and others that Palestinian national identity existed well before 1917 though it was only named as such by the local educated elite¹⁹. Nevertheless, Khalidi agrees that the Balfour declaration was indeed a crucial factor for the formation of firm Palestinian political identity especially after the collapse of the Ottoman Empire and with gradual demand of local national identities that emerged post World War I²⁰. However, while one political national identity – the Palestinian nation – did emerge

¹⁵ Assaf Likhovski, *Law and Identity in Mandate Palestine*, 1st ed. (The University of North Carolina Press, 2006).

¹⁶ British Secretary of State Arthur James Balfour had issued a letter later to be known as “Balfour declaration” to the Baron Rothschild- a leader of the British Jewish community that guarantees and insures the Commitment of the British Empire in insuring an establishment of a Jewish homeland in Palestine. A declaration that intimidated the Palestinian Elite of taking over the land after the Mandate Rule is over.

¹⁷ Likhovski, *Law and Identity in Mandate Palestine*, 21.

¹⁸ Efraim Karsh, *The Arab-Israeli Conflict. The Palestine 1948 War* (Oxford, Osprey, 2002)

¹⁹ Rashid Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness* (New York: Columbia University Press, 1997).

²⁰ Ibid.

from this historic moment,²¹ this national identity failed to transition their vision and aspiration into practical legal claims and demands. Much debate at the time revolved around whether an Ottoman or a general Arab identity would serve the community's needs to confront the Zionist aspirations²².

Despite uncertainty in categorization, during the British Mandate, the two populations in Palestine continued to grow: "Between 1922 and 1944, the Palestinian population grew from more than 750,000 to about 1,750,000 and the Jewish population grew from about 83,000 to about 530,000"²³ making the clash between the two identities, the indigenous Palestinian majority and the settler Jewish minority, inevitable. Eventually, the tension between a native population resisting a growing foreign settler population where both were actively rejecting the other's existence and claim to the land, reached its breaking point with the war of 1948 – known as the "War of Independence" for the settler Jewish community and the "Nakba" (Arabic for "catastrophe") for the native Palestinian community.

The "Nakba," which continues to define the Palestinian historical narrative, was thoughtfully calculated by the Jewish independence movement; according to Pappe, before declaring independence, Zionist leaders and generals had a well-established plan to "clean" Palestine of its local inhabitants. It was regarded by David Ben-Gurion – major Zionist leader who later became Israel's first Prime Minister – that

²¹ Although it seems to be natural identity transformation, Rashid Khalidi defers from common historians' stream that asserts national Palestinian Identity did not exist before 1917. As pointed out by conservative historians in Israel, National identity had emerged as contra and exclusively to the Jewish Demand to establish their own independent state in Palestine, which was preserved as a threat by the local Arab community; an attempt argued by Khalidi contributed to delegitimize and deny any Palestinian Identity that related to their promised Jewish state.

²² Khalidi, *Palestinian Identity*, 156.

²³ Likhovski, *Law and Identity in Mandate Palestine*, 21.

a Jewish state could not exist with large Arab population within its borders when the “Jews owned less than 7 percent of the land”²⁴ before 1948. Such an assessment led, as historically well-documented²⁵, to a systematic ethnic cleansing²⁶ of villages (over 450 Palestinian villages were destroyed during the Nakba) and cities (such as Jaffa, Jerusalem, Lod, Ramleh and Haifa) causing the displacement of more than 1 million Palestinian from their national homeland and turning them into the largest refugee population in the Middle East post World War II²⁷.

The ethnic cleansing of historic Palestine, which occurred during and after the war of 1948²⁸, resulted in the tragic loss of Palestinian homes, lands, and villages, and the establishment of the State of Israel on 80% of historic Palestine. Significantly, and deliberately, this created an extreme demographic shift, where the native Palestinian

²⁴Pappe, *The Forgotten Palestinians*, 17.

²⁵ See Nur Masalha, “New History, Post-Zionism and Neo-Colonialism: A Critique of the Israeli New Historians’”, *Holy Land Studies: A Multidisciplinary Journal* (Edinburgh University Press) 10, no. 1 (May 2011): 1–53; and Benny Morris, “Revisiting the Palestinian Exodus of 1948,” in *The War for Palestine: Rewriting the History of 1948*. Ed. E.L.Rogan & A.Shlaim (Cambridge: Cambridge University Press, 2001), 37–59.

²⁶ Note that the concept Ethnic Cleansing is widely controversial, used by Pappé based on Israeli government materials declassified 30 years after the founding of Israel. Whereas other new historians use more delicate terms that include the words “expulsion” and “transfer”. On the other hand, old generation Israeli Historians who had been influenced by Zionism and were one of the early settlers in “Eretz Israel” explicitly disregard these concepts and explain this tragic phenomena as a Collective Abandonment of the Arab population fleeing their homes and driven by fears as common outcome of the war.

²⁷ Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oneworld, 2007).

²⁸ As a result of the violent struggle and battles, many families had left their houses and fled to neighbor villages and cities with a hope to come back after the war, found themselves either outside the temporary territorial borders of Israel or inside Israeli territory but without the ability to come back to their homes and villages. This had been legalized through offensive legislation that denied them legal access to their properties, and often these villages were totally burned down and demolished, allowing Jewish immigrants to take over and settle in former local Arab areas.

population that numbered more than 1.5 million was reduced dramatically to 160,000 residing as a minority in their homeland.

However, due to their national identity, and their relation to other Palestinians outside Israeli territory, this Palestinian minority was considered a “fifth column” and considerable security threat. Thus, despite the fact that the indigenous Palestinian community that remained inside the newly established Jewish state were formerly declared citizens in 1948, Israel imposed on them an 18-year military rule.²⁹ Beginning with the restrictions of military rule and continuing to today with oppressive discriminatory laws and policies, Palestinian citizens have been excluded from political, social and economical decisions that have considerable affect on their every day lives.

This work provides the legal basis and justification for implementing standards of effective participation to ensure realization of fundamental human rights and values and protection of the individual and collective rights of the Palestinian minority in Israel. Recent developments regarding the conception of minority rights and democracy has led to the understanding of effective participation as vital standards of “political recognition of minority or ethnic groups and their [need to] collective cultural and political life”³⁰. This study will argue that Israel’s structure as an ethnic-religious state with democratic characteristic, creates a heavy burden on the Palestinian minority living within it, through limiting its access to political, social and economic powers. Significantly, the ruling Jewish majority has resulted legislated discriminatory laws that specifically limit the effective participation of the Palestinian

²⁹Pappe, *The Forgotten Palestinians*, 46.

³⁰Yash Ghai, *Public Participation and Minorities International Law*, Minority Rights Group International, n.d., 3.

in Israel³¹. Under international law, states are obligated to take concrete measures in order to eliminate structural exclusion and subordination of minorities by enacting anti-discrimination laws and policies consistent with international and regional human rights law combined with positive obligation to insure minorities' effective participation and representation in public life³².

While previous literature by Wheatley and Weller demonstrates the importance of public participation standards, this work further argues that effective participation is an indispensable standard of democracy. In other words, democracy cannot exist without effective participation standards that ensure the basic and fundamental rights of minorities. This work will examine the structural basis of democracy and its nature as a fundamental system for protection of minority rights and achieving equality and effective participation. Therefore, this study presumes that democracy is designed to guarantee participation toward minorities who may easily become excluded from normal political channels in a democracy³³.

³¹Pappe, *The Forgotten Palestinians*.

³²Weller, *Universal Minority Rights*.

³³Wiktor Osiatyński, *Human Rights and Their Limits*, 1st ed. (Cambridge University Press, 2009).

Literature Review

Minority groups may face “structural exclusion” from the public decision-making process in democratic society, when the majority generates the legal framework³⁴. Weller argues that in order to overcome this structural exclusion, states may undertake measures that guarantee minority effective representation while maintaining anti-democratic obligations³⁵. The principle of effective participation allows for special protective measures, legislation, procedures, and policies that guarantee the representation, consultation, and participation of disadvantaged minority groups. While equality before the law demands enforcement of anti-discrimination laws, genuine equality and fairness also depends on that state fulfilling its obligations to minorities as recognized under international law and regional human rights systems.³⁶ This balance can be achieved by adopting a framework of “minority rights” which ensures and preserves their distinctive identity as well as the mechanisms necessary to achieve their right to effective participation. Weller suggest that one mechanism that could satisfy the rights of minorities to effective participation is by adopting special electoral representation or ensuring quotas in parliament³⁷.

However, insuring special electoral representation alone will not effectively guarantee the right of minorities to effective participation. When discriminatory laws are passed by majorities in parliament that are aimed to limit the rights of the minority, minority representatives are relatively powerless to repeal such laws. Further, there is necessarily limited consultation with the minority concerned in cases

³⁴Weller, *Universal Minority Rights*, 477.

³⁵*Ibid.*, 478.

³⁶*Ibid.*

³⁷*Ibid.*, 479.

of potential interference with their civil, economic and cultural interests.³⁸ Thus, scholars like Wheatley argue that in order to ensure cultural, religious and linguistic practice among persons belonging to minorities, as guaranteed by Article 27 of the International Covenant for Civil and Political Rights (ICCPR), states must take measures to ensure effective participation in public life. The Human Rights Committee (HRC), which monitors the implementation of the ICCPR, regularly holds that failure to ensure interests and cultural practices among minorities on behalf of states might constitute a violation of article 27³⁹. However, states are not directly obligated to ensure the right to effective participation or to guarantee that minority interests are “directly represented in decision making processes”.⁴⁰

Therefore, the essence of the right to effective participation in public and political life, according to Wheatley, is the right to be heard when decisions affecting minority interests are adopted. Thus, while a state is not obliged to ensure that the minority’s interests are directly represented at all times, in certain contexts, where decisions may explicitly affect minority groups, states must take their interests and needs into full consideration. Securing the right to be heard in decisions that directly affect minorities is necessary to guarantee their effective participation and representation. This interest must be minimally guaranteed and the needs of the minority must be reasonably valued compared to other state's legitimate interests.

Existing literature on the subject failed to illustrate that these existing standards comply with the democratic majoritarian process. According to Osiatynski

³⁸ Steven Wheatley, *Democracy, Minorities and International Law* (Cambridge University Press, 2005), 150.

³⁹ *Ibid.*, 152.

⁴⁰ *Ibid.*, 153.

“democracy assures participation”⁴¹, indeed, human rights could be threatened without democratic participation. The right to equality, for instance, serves as a check on those who possess the power; without the guarantee of equality and effective participation, state power could be used to restrict and limit participation and exclude minorities in all spheres of life. Moreover, where there is a *prima facie* ethnic and national conflict, and the power is exclusively given to one ethnic group, any failings in the democratic process could result in the suspension of “the rule of law to protect [the majority’s] interest”⁴².

Interestingly, the 18th century concept of democracy was not about effective participation. James Madison’s concept of democracy was based on a numeric model that did not take into so-called “durable minorities”⁴³. In this formulation of democracy, human rights violations could be easily justified through simple democratic processes that required only basic participation standards⁴⁴. Without meaningful effective participation of minorities, especially in places of ethnic and national conflict, the human rights of the minority are easily compromised by basic democratic decision-making. Thus, this study departs from the literature and argues that effective participation cannot be fully guaranteed without a mechanism of minority veto power to protect their vulnerability in public life.

⁴¹Osiatyński, *Human Rights and Their Limits*, 72.

⁴²*Ibid.*, 73.

⁴³*Ibid.*

⁴⁴*Ibid.*, 85.

Definition of Minority

While there is no universally agreed definition, the international framework holds reasonably developed standards that clarify the concept of 'minority'⁴⁵. This research will look into the UN mechanisms, EU treaties and the scholarship of Independent Experts clarifying the concept. The former United Nations sub-commission on prevention of discrimination and protection of minorities, offers a wide range of definitions and classification of minorities⁴⁶. However, prevailing opinion observes that any attempt to simplify and offer a precise definition would exclude and deteriorate those who belong to such a group⁴⁷.

Francesco Capotorti, a former Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, proposed one of the most widely accepted definitions of a minority⁴⁸. According to his definition offered in 1977, a minority is:

“A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity,

⁴⁵ Patrick Thornberry, *International Law and the Rights of Minorities* (Oxford University Press, USA, 1991), 164.

⁴⁶ Definition and Classification of Minorities □: Memorandum Submitted [to] United Nations Commission on Human Rights, Sub-commission on Prevention of Discrimination and Protection of Minorities. (United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities,, 1915).

⁴⁷ Thornberry, *International Law and the Rights of Minorities*, 164.

⁴⁸ *Ibid.*, 6.

directed towards preserving their culture, traditions, religion or language”⁴⁹.

Yet, this broad definition was subject to criticism and controversy, *inter alia*, for making the nationality of a group, a prerequisite for their belonging to a minority group. One of the improvements to Capotorti definition, was made by Jules Deschenes, a former Canadian member of the UN sub-commission on Prevention of Discrimination and Protection of Minorities who offered the following definition:

“A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.”⁵⁰

Deschenes, preferred using the term citizens rather than nationals of a state, thus, including other non-national minorities, e.g. migrant workers, refugees and state-less persons.⁵¹

Thornberry - a legal expert on minority rights, propose two obvious elements that can distinguish a minority: (a) the existence of a community: a “group of individuals who share certain national, ethnic, religious or linguistic characteristics”⁵² that qualifies a group as a community and (b) distinctive nature: a non-dominant

⁴⁹ E/CN.4/Sub.2/384/Rev.1, para. 568

⁵⁰ UN Doc E/CN.4/Sub.2/1985/31, para. 191

⁵¹ Thornberry, *International Law and the Rights of Minorities*, 7.

⁵² *Ibid.*, 164.

group which can be distinguished from a dominant group or a tangible majority⁵³. In addition, Thornberry distinguish between two types of minorities. One category is defined as ‘minorities by wish’ who “wish to maintain their distinctive cultures, languages or religion”⁵⁴ and on the other hand, ‘minorities by force’, who unlike the former, do not wish to obtain and maintain its protected characteristics⁵⁵. Nevertheless, according to Capotorti, ‘minority by wish’ who desire to pursue a distinctive identity, and preserve their basic characteristics cannot flourish without non-discriminatory measures by the state, which constitute the right of a collective group for deferential treatment.⁵⁶

Historically, the underlying assumption after World War II was that neglecting minority’s interests and claims would lead to instability and tension within state boundaries and in the whole European continent. These arguments were based on the dramatic geopolitical changes, and fierce conflicts surrounding the notion of minorities. However, the early 1950s show very clearly that the international community was not concerned with minorities as groups, but rather with protecting the rights of individuals⁵⁷. The two instruments adopted in 1948 and 1950, the Universal Declaration of Human Rights (UDHR) and The European Convention on Human Rights (ECHR), respectively, both maintain an individualistic scope of rights, while placing an emphasis on anti-discrimination provisions and equality norms as sufficient to provide protection to all individuals and members of minority groups⁵⁸.

⁵³Ibid.

⁵⁴Ibid., 10.

⁵⁵Ibid.

⁵⁶Ibid.

⁵⁷Will Kymlicka, *The Rights of Minority Cultures* / Edited by Will Kymlicka (Oxford: Oxford University Press, 1995, n.d.), 18.

⁵⁸Ibid.

This approach lasted until the early 1990's, with no specific convention providing a concrete uniform definition to the concept of "minority". Neither The International Convention on the Elimination of All Forms of Racial Discrimination- 1965 (CERD) nor The International Covenant on Civil and Political Rights- 1966 (ICCPR), adopted any provision that specifically defines the concept of minority. However, the CERD does use the concept of 'cultures', emphasizing the prohibition of racial discrimination on basic and familiar grounds: "race, color, descent, national or ethnic origin"⁵⁹ and stresses the notion of equality and fundamental rights to all persons. The ICCPR, does the same, in a slightly different manner. Unlike the CERD, which places upon states specific obligations to avoid, prohibit and punish racial discrimination, Art. 27 of the ICCPR, places a positive obligation on states to guarantee the rights of minorities: "to enjoy their own culture, to profess and practice their own religion, or to use their own language"⁶⁰. Despite the vagueness of this provision, many states declared reservations not to be bound by this article, due to the fact that this would oblige states to recognize minorities and may be inconsistent with its internal political agenda leading to a loss of national identity⁶¹. Article 27 was seen as a limitation on the state's exclusive sovereignty on internal affairs, one of the fundamental principles in international law.

Nevertheless, unlike the CERD, the ICCPR uses the term of "person belonging to such minorities"⁶². The Committee made it very clear in its General Comment No.

⁵⁹ Article 1.1 to the International Convention on the Elimination of All Forms of Racial Discrimination, adopted on 21 December 1965, came into Force on 4 January 1969.

⁶⁰ Article 27 to the International Convention on Civil and Political Rights adopted on 16 December 1966, came into force on 23 March 1976.

⁶¹ Thornberry, *International Law and the Rights of Minorities*, 155.

⁶² Article 27 to the International Convention on Civil and Political Rights.

23 on the rights of minorities that the ICCPR could be read as stepping stone for future conventions on minority rights:

“Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion”⁶³

The period of conceptualizing rights as individual rights seemed to draw to a close in 1992, with the adoption of the non-binding UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the first explicit and exclusive international document to deal with minority rights. Despite the difficulties and reservation of states in accepting minority rights, the international community has continued to seek greater protection and legal recognition for minority rights. The declaration illustrates the evolving understanding that non-discrimination alone, and equality norms set forth in the current human rights conventions are insufficient to fully guarantee rights of persons belonging to minorities, especially their group rights.

In Europe, the evolution of the concept of minority rights led to the adoption of the Convention for the Protection of National Minorities (1995). Similar to the UN declaration, the framework lacks a general definition of a ‘minority’ and most importantly, it generates only a general obligation, even though it is ratified as a treaty and has a legal binding effect upon member states. However, unlike UN conventions, it is a regional instrument part of the Council of Europe, supported by the Committee

⁶³ General Comment No. 23 of the Human Rights Committee on: The Rights of Minorities (Article 27) CPR/C/21/Rev.1/Add.5, 04/08/1994.

of Ministers who are charged with monitoring the implementation and initiating recommendations⁶⁴.

Gradually, the International Human Rights bodies illustrate the shift in holding a firm and genuine minority rights framework that reflect the International and Regional consensus of what constitute minority rights.

How do we guarantee minority rights?

Unlike universal rights and claims, which are aimed at the protection of universal individualistic norms and values, (e.g. freedom of speech, the right to equal treatment) minority rights, are generally based on collective claims, such as the right to "preservation of a separate identity".⁶⁵ These collective claims, were not included in the early stages of the modern human rights legal framework, and indeed challenge the legal concept of the Universal Declaration of Human Rights (UDHR), the first international human right instrument that is based on the traditional individualistic scope of the rights⁶⁶. The very essence of the UDHR enshrined in Article 2, states that the rights apply to "everyone without distinction of any kind..."⁶⁷. However, the individualistic scope of rights adopted by early human rights conventions illustrates the basic assumption that individual rights are sufficient to protect cultural differences and collective identities⁶⁸. While this idea is derived from the notion of equality and the concept of fairness, constitutional scholar Will Kymlicka argues that the individual rights framework in fact allows for unjust benefit to majority groups and

⁶⁴ Article 24 to the Framework Convention.

⁶⁵ Thornberry, *International Law and the Rights of Minorities*, 10.

⁶⁶ *Ibid.*, 11.

⁶⁷ United Nations, *Universal Declaration of Human Rights* (United Nations Publications, 2010).

⁶⁸ Kymlicka, *The Rights of Minority Cultures / Edited by Will Kymlicka*, 107.

the perpetuation of unequal status quo⁶⁹. Thus, in order to overcome structural discrimination and unjust outcomes, minorities need political and legal safeguards that equalize their standing as to other dominant groups and consequently achieve genuine fairness⁷⁰.

⁶⁹Ibid., 108.

⁷⁰Ibid., 109.

Equality, minorities and human rights

In *Theory of Justice*, John Rawls proposes proceduralequality as the starting point that will ultimately produce a just outcome. Rawls' basic assumption derives from the notion of universality:

“First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.”⁷¹

Ultimately, Rawls argues equality between individuals will produce just outcomes. Therefore, disparities between individuals or groups justify unjust distribution of social goods. This leads us to the concept of rectifying justice, which, when applied to effective participation calls for the elimination of any disparity that would result in under-representation of certain groups in decision making.

Hubermas' theoretical approach of rights similarly justifies special participatory standards in democratic processes, arguing that norms produced by democratic procedures are legitimate only when they can meet the approval of those potentially affected⁷². Similar to Rawls, Hubermas engages with his theory through deliberate democracy where everyone including minorities are qualified to participate. Indeed this is democracy's highest purpose⁷³.

There is no dispute that one of the synonyms for democracy is equality. Democracy assures that basic rights are equally granted to all citizens. Osiatynski phrases it "human rights cannot exist in the absence of democracy and democracy

⁷¹ John Rawls, *A Theory of Justice: Original Edition* (Belknap Press of Harvard University Press, 2005), 53.

⁷² Jurgen Habermas and William Rehg, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (The MIT Press, 1998), 123.

⁷³ Ibid., 128.

cannot exist without human rights".⁷⁴ From the beginning, the United Nations human rights system strongly emphasized that democracy was the natural environment in which to realize and effectively guarantee human rights. The UDHR clearly demonstrates the interconnection between democracy and human rights in Article 21(3):

“The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”⁷⁵

The characteristics of the provision qualify the basic form of democracy recognized by the international community – the classical representative model of democracy where citizens exercise their rights by electing their favorite representative with full and equal consent. These values are further entrenched in the ICCPR and were intended to include: the right to peaceful assembly; freedom of association; freedom of expression and opinion and most importantly the notion of equality in exercising civil and political rights, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁷⁶

The common belief among democracy scholars is that the protection of dignity, the right to participate and equality cannot be guaranteed without mechanisms of check and balances that restrain arbitrary abuse of government

⁷⁴ Osiatyński, *Human Rights and Their Limits*, 72.

⁷⁵ The Universal Declaration of Human Rights.

⁷⁶ Article 2(1) to the International Covenant on Civil and Political Rights- signed on 16 December 1966, came into force 23 March 1976

power. Thomas Jefferson stressed the notion of limited governance through the separation of powers where basic civil and political rights could be ensured⁷⁷. When the delicate system of checks and balances fails to operate, unlimited use of power could fall in the hands of the majority opposing a threat to the rule of law and basic rights. Naturally, the first to be harmed are minorities and vulnerable groups, which are in great need for protection⁷⁸.

According to Robert Alan Dahl, a distinguished political scientist, there are 5 criteria necessary and sufficient to characterize a democracy:

1. Democracy must guarantee 'Political Equality'. Dahl explains that every member in a society should have an equal opportunity to take part in every decision-making process especially in matters important to him/her, such as equal access to elections, access to political process, and debates.⁷⁹
2. In order to guarantee political equality, each member should be able to participate effectively⁸⁰. Effective is guaranteed when each member is allowed the equal opportunity to engage and contribute to the political process.
3. Democracy must assure to each member "adequate and equal opportunities for discovering and validating, in the time available, what his preferences are on the matter to be decided."⁸¹ Knowledge, flow of information and transparency are important values to ensure that all members have the same opportunity to reach an enlightened understanding and make informed decisions.⁸²

⁷⁷Osiatyński, *Human Rights and Their Limits*, 72.

⁷⁸*Ibid.*, 73.

⁷⁹Robert Alan Dahl, *Democracy, Liberty, and Equality* / Robert A. Dahl (Oslo: Norwegian University Press, c1986, n.d.), 141.

⁸⁰*Ibid.*

⁸¹*Ibid.*

⁸²*Ibid.*, 150.

4. Participation in the political process must be limited to adults but must include all citizens subject to state sovereignty; these adult citizens should be able to exercise civil and political rights.⁸³
5. Finally, a state that wishes to become a 'full procedural democracy' must ensure that sovereignty belongs to the people⁸⁴. This criterion is needed to ensure that state power does not fall into the hands of a small elite who decide what is best for the whole society. Dahl believes that excluding part of the society from the opportunity to participate in political matters might lead to tyranny or a majoritarianism.

The whole idea of limited governance together with political culture, according to Dahl, inherently regards democracy as a better "extensive domain of personal freedom than any other kind of regime can promise"⁸⁵.

However, does democracy necessarily assure equality? At a first glance, democracy, which fulfills the 5 criteria above, reflects a good form of governance⁸⁶, unlike tyranny or autocratic regime where "the law makers are different from those to whom the laws are addressed"⁸⁷. Robert Post asserts that democracy is a unique shape of governance where "the people exercise ultimate control over their government"⁸⁸.

Yet, majoritarianism can also be associated with democracy, where a dominant majority exclusively controls the exercise of power; however majoritarianism cannot

⁸³Ibid., 142.

⁸⁴Ibid.

⁸⁵Robert Alan Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, c1989, n.d.), 89.

⁸⁶Dahl, *Democracy, Liberty, and Equality* / Robert A. Dahl, 143.

⁸⁷Robert Post, "Democracy and Equality," *Annals of the American Academy of Political and Social Science* 603 (January 1, 2006): 25.

⁸⁸Ibid.

set the boundaries for democracy. Unlike majoritarianism, democracy "is a normative idea that refers to substantive political values".⁸⁹

Though the risk of majoritarianism remains, in order to assure equality, autonomy is essential to democracy. According to Post, self-determination includes: (a) a collective responsibility for decision making mechanism and (b) individual determination for these responsibilities. When 'B' is absent, collective decision-making procedures might oppress and become undesirable. Rousseau developed this rationale by distinguishing between collective will and individual will. Individual will is at risk of suppression and alienation from the decision making process, but both collective and individual will fulfill substantive roles in a democracy⁹⁰. This leads us to the next question: how could democracy guarantee that no one is alienated or suppressed from decision-making processes?

Democracy presumably assures equality. Equality is guaranteed when the state provides every citizen with a free will and self-determination to participate freely and autonomously in the democratic decision-making⁹¹. When citizens are not treated equally, their freedom to participate will be limited and consequently allow "some citizens greater freedom of participation in public discourse than others"⁹². According to Dahl's criteria, democracy is based on equality by vote⁹³. Many scholars seem to share the view that procedures based on majority vote is a prerequisite to a

⁸⁹Ibid.

⁹⁰Ibid., 27.

⁹¹Ibid., 28.

⁹²Ibid., 29.

⁹³Wojciech Sadurski, "Legitimacy, Political Equality, and Majority Rule.," *Ratio Juris* 21, no. 1 (March 2008): 39–65. Equality by voting is a formal procedural criterion of democracy, which is based on the majority rule. Eventually it may lead to misappropriate result toward those who belong to minority.

democracy⁹⁴. Accordingly, equality by vote and majority rule is important to assure legitimacy to the rule of people⁹⁵. As Sadurski phrases it: "Majority rule is for Rousseau, so to speak, the closest we can get to the unanimity in non-ideal situations"⁹⁶. In this case, simple majority represent the "general will, whereas, unanimity, on the other hand, "is a power of veto given to a single opponent whose opinion becomes weightier than the opinions of all proponents of a directive put together"⁹⁷; power which contradicts the essence of democracy.

However, equality by vote based on majority rule leads inevitably to unequal outcomes. Eventually, anyone who adopted the opposite opinion is affected differently⁹⁸. Yet, the knowledge that everyone had the chance to participate and influence in this early stage gives legitimacy and credibility to the political process and to the majority rule because it retains the principle of equality that lies behind democracy as a representative model for the people.⁹⁹ This concept of detached democracy, where the system of governance has these democratic characteristics and procedural safeguards, was first articulated by Ronald Dworkin, as distinguished from dependent democracy. Sadurski describes dependent democracy as a model that "supposes that the best form of democracy is whatever form is most likely to produce the substantive decisions and results that treat all members of the community with equal concern"¹⁰⁰.

⁹⁴Ibid., 45.

⁹⁵Ibid., 41.

⁹⁶Ibid., 47.

⁹⁷Ibid., 48.

⁹⁸Ibid., 63.

⁹⁹Ibid., 41.

¹⁰⁰Ibid., 52.

In detached democracy, weak and underrepresented layers of society are deprived from political means and measures to influence and participate equally. This is not simply that 'Majority Rule' is the cause of an unjust outcome, but rather that unjust circumstances and unequal factors prior to political engagement and decision-making lead to unequal outcome. Sadurski describes that "M[ajority] R[ule] applies only to the final stage of the decision-making process, which follows, and is responsive to, an earlier stage consisting, as it normally does, of the deliberation of various proposals."¹⁰¹ However, in reality this earlier stage either does not exist, or is so influenced by structural inequality that proposals by minority groups are insignificant.

Promoting the participation of marginal groups and protecting their needs and interests against that of the ever-powerful majority demands bold thinking. For example, veto power or the requirement of unanimous decisions could contribute to a just outcome where cannot be achieved with simple majority vote procedures. Despite its seemingly "anti-democratic" nature, veto power in limited circumstances can strengthen democracy by promoting minorities and increasing their effective participation in public spheres. Without these safety measures "[a] majority can exploit, oppress, and even enslave a minority."¹⁰²

In sum, when participation standards do not address the needs of the minority, while they might appear on the surface to be equal, the standards restrict and limit vulnerable groups and therefore undermine the democratic lawfulness of the state¹⁰³. Continuous failure to fulfill these basic values creates structural inferiority

¹⁰¹Ibid.

¹⁰²Ibid., 49.

¹⁰³Post, "Democracy and Equality," 33.

and unlawful functionality. In the end, structural inferiority of groups of citizens jeopardizes the legitimacy of the democratic regime.¹⁰⁴

¹⁰⁴Ibid., 34.

A Jewish and Democratic State

Many scholars consider the State of Israel as corresponding to high standards of democracy. Several studies describe Israel as a concessional democracy or as a liberal model, based on different parameters and assumptions. Particularly, these studies determine that the Palestinian minority in Israel exercises civil and political rights as much as other minorities inhabiting Western democracies.¹⁰⁵

The common variable in these studies is the scrutiny given to Israel's characterization as a "Jewish and Democratic state", while concentrating on the religion and its effects toward the democratic component¹⁰⁶. Several studies, stress the difficult circumstances that distinguish Israel as a country struggling for its existence, surrounded by enemies who wishes to totally ruin and demolish the state. Consequently, arguing that all these drastic measures and policies applied toward the Palestinian minority were meant to secure the existence and the fate of the country. The structure of Jewish supremacy and Palestinian inferiority was inevitable and a reasonable response to the threatening factors, and thus does little to question the State's democratic character.¹⁰⁷,

Oren Yiftachel Israeli geo-political scholar, argues that Israel corresponds to a model of 'Ethnic Democracy' falling between a democracy and non-democratic countries for maintaining a Jewish ethnic supremacy in most spheres of public life¹⁰⁸.

¹⁰⁵ Horowitz and Lissak, Don-Yehiya, Shapira, Sheffer and Lijphart.

¹⁰⁶ Jonathan and Jonathan, "A Jewish and Democratic State? Comparing Government Involvement in Religion in Israel with Other Democracies."

¹⁰⁷ Yonathan Shapira, "Democracy in Israel" (Massada, 1977).

¹⁰⁸ Oren Yiftachel, "The Ethnic Democracy Model and Its Applicability to the Case of Israel," 1992.

Yoav Peled accepts the classification of Ethnic Democracy¹⁰⁹, and highlights three guiding principles that characterize Israel: (1) Ethnic principle: which gives the Jewish citizens exclusive state power and governance. (2) Liberal principle: guarantees civil liberties and equal rights to all citizens. (3) Republican principle: communal based principle that ascertain special rights to communal identity who benefit and contribute to the common good¹¹⁰.

In the Israeli context, Peled argues that while Palestinian citizens of Israel enjoy civil liberties; they are excluded from republican rights, consequently, "placing them in a situation of subordination and inferiority relative to the Jews"¹¹¹. Nadim Rouhana and As'ad Ghanem go further to classify Israel as a non-democratic ethnic state. Their study examines the deep divisions and differentiations between Palestinian and Jewish citizens in Israel. They argue that in the absence of equal treatment to all its citizens, Israel cannot be defined as a democracy at all. Hence, they characterize the current regime in Israel as a '*Herrenvolk*democracy' where only the dominant ethnic group is granted citizenship rights.¹¹² Meanwhile, the Palestinian minority in Israel is "treated as second-class citizens feared as a threat, excluded from the national power structure and placed under constant control".¹¹³ The dichotomy the "Jewish and Democratic state" has had a decisive effect on the Palestinian minority

¹⁰⁹Yoav Peled, "Strangers in the Utopia: The Civic Status of Israel's Palestinian Citizens," 1993.

¹¹⁰Ibid., 22.

¹¹¹S. Smootha, "Ethnic Democracy: Israel as an Archetype," *Israel Studies* 2, no. ii (1997): 204.

¹¹²Nadim Rouhana and As'ad Ghanem, "The Crisis of Minorities in Ethnic States: The Case of Palestinian Citizens in Israel," *International Journal of Middle East Studies* 30, no. 3 (1998): 321.

¹¹³Smootha, "Ethnic Democracy: Israel as an Archetype," 200.

and the state policy toward them. Any attempt to propose a solution to justify the measures to strengthen their effective participation cannot ignore this critical context.

Since its creation in 1948, Israel has constantly claimed it had granted all its citizens including Palestinian citizens civil liberties such as, freedom of assembly, expression, movement, association, worship, voting and standing for elections. The Declaration of Independence granted equal rights to all citizens in the state of Israel, though from 1948 – 1966, Israel imposed a military rule on the Palestinian citizens, severely suspending their basic rights. This policy led to major land confiscation, restriction on the freedom of movement, banning assemblies and importantly stifling the right to freedom of expression. Palestinian media, both video and audio, was confiscated or censored by the national censorship. Nonetheless, the Declaration is phrased as follows:

“THE STATE OF ISRAEL will be open for Jewish immigration and for the Ingathering of the Exiles; it will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations.”¹¹⁴

¹¹⁴ The Declaration of the Establishment of the State of Israel, approved and declared by the Jewish Council on 14 May, 1948 at the time when the British Mandate over Palestine had expired.

At the same time, Ian Lustick American political scientist, had carefully defined Israel's as a 'control policy' toward the Palestinian minority¹¹⁵:

- (1) Co-option of the Palestinian political and social leadership by granting them privileges in order to execute policies serving the state.
- (2) Imposing heavy security measures, as part of military rule, was placed exclusively on the Palestinian minority. Though Palestinians were formally declared citizens upon the establishment of the State of Israel in 1948, the new Jewish majority viewed (and largely continues to view) them as a potential fifth column and security threat to the State.
- (3) Strengthening the disparities between Palestinians and Jews, especially by creating fragmentation within the Palestinian community in Israel that include Muslims, Christians, and Druze.
- (4) Maintaining policies that serve to increase the Palestinian economic dependence on state economy. The policy of mass land confiscation severely restricted the main livelihoods of the traditionally agricultural society, forcing Palestinian farmers into the roles of wage-laborers in the new Jewish state. Prior to 1948, the Jewish community in Palestine owned between 6-7% of the land; today, in modern Israel, the State owns 93% of the land.
- (5) Isolating the Palestinian minority in Israel from the Arab majority in neighboring countries. Any contact initiated by Israeli citizen (including Jews)

¹¹⁵Ian Lustick, *Arabs in the Jewish State*: Israel's Control of a National Minority (Austin: University of Texas Press, c1980., n.d.).

with the Palestinian Liberation Organization in the West Bank was prohibited, considered a treason and was sanctioned with imprisonment.¹¹⁶

Hence, Palestinian citizens of Israel were immediately classified as second-class citizens and were denied equal treatment. Yet, within the international community, the fact that Israel maintains Jewish supremacy and exerts control over the Palestinian minority did not call into question Israel's democratic nature. According to Jonathan Fox a scholar in political science and Rynhold Fox a specialist on Israeli diplomatic relations, given the context of Israel's establishment in 1948, religious and ethnic Zionist-Jewish symbols are a natural phenomenon of a nation struggling for existence as a nation with a dominant Jewish majority. Fox infers that The Law of Return (1950) and The Citizenship Law (1952) "which allow all Jews who wish to immigrate to Israel an automatic right of citizenship"¹¹⁷, while excluding Arabs who were forced to flee their homes in 1947 and 1967¹¹⁸, along with other discriminatory laws, are natural and widely common features of normal democratic model that is based on dominant ethnic origin¹¹⁹. Fox even argues that the policy behind the Law of Return is no different from other discriminatory European laws based generally on ethnic origins. However, unlike immigrants and aliens in European countries, the Palestinian minority, who remained in Israel after 1948 are treated as second-class citizens.

¹¹⁶Pappe, *The Forgotten Palestinians*. Jews who intended to make a contact with the PLO members were doing so in secrecy without state official channels.

¹¹⁷Jonathan and Jonathan, "A Jewish and Democratic State? Comparing Government Involvement in Religion in Israel with Other Democracies," 512.

¹¹⁸For the Jews 1948 symbolize the fulfillment of the Zionist Dream and the establishment of a hometown for the Jewish People. On the other hand, the establishment of Israel, symbolize for the Palestinians, a catastrophe of their demographic brake up with the destruction of more than 400 villages and cities, catastrophe later to be know as the Palestinian 'Nakba'.

¹¹⁹Jonathan and Jonathan, "A Jewish and Democratic State? Comparing Government Involvement in Religion in Israel with Other Democracies," 516.

Additionally, the some 780,000 Palestinian refugees who fled Israel during the “Nakba” are denied access to their lands, homes and villages prior to 1948.

Many studies refer to the Zionist agenda founded by the first Zionist Leader Theodor Herzl in 1895. According to his vision, "Jews are one people with a common history and destiny," hence, the Jewish people, currently “in exile” must gather and form a sovereign extraterritorial nation.¹²⁰ However, the vision of Herzl was translated into the Declaration of Independence and did include an explicit provision of equality for all inhabitants of the new Jewish state. Hence, Fox argues that Israel effectively provides equal social and political rights to all citizens as a democracy, while simultaneously maintaining legitimate Jewish dominancy.

Roselle Tekiner on the other hand, believes this concept of granting all Jewish people around the world the right to migrate and reside Israel, which surprisingly, transforms Jews from a "people" to a "legal designation of a national constituency"¹²¹ is unique with no other equivalent in the world. Where other countries do not distinguish between nationality and citizenship, Israeli nationality does not necessarily imply about citizenship. The Law of Citizenship, clearly define Jews as nationals, while defining non-Jews in Israel as citizens. As a result, Jewish immigrants are the only ones to be granted nationality status. Consequently, national institutions, serve the "Jewish people" exclusively.¹²² Significantly, when the State of Israel enacted in 1992 its “Basic Laws,” which are considered a mini-bill of rights, there was no explicit protection of the right to equality. Instead the Basic Laws

¹²⁰Roselle Tekiner, “Race and the Issue of National Identity in Israel,” *International Journal of Middle East Studies* 23, no. 1 (1991): 44.

¹²¹*Ibid.*, 49.

¹²²*Ibid.*, 51.

reiterate the Jewish character of the state, further undermining the rights of “non-Jewish” citizens.

Assessing entrenched divisions between the Jewish majority and the Palestinian minority, Sammy Smooha, Professor of sociology and a specialist in comparative ethnic relations, distinguishes between four types of democratic models and examines whether Israel fits one of them:

(a) **Individual Liberal Democracy:** also known as a constitutional democracy, it is mainly based on individual liberty and freedom, where every member of society can exercise his will and civil rights without any interference. The state is not enthusiastic to create a common good, culture or unified language. In this model, solidarity toward the state is minimal where every citizen engages in his own beliefs and free will. Hence, every member is treated as an equal citizen, without any supremacy or favorable nationality. According to Smooha, this type of democracy is the closest to utopian model in political philosophy¹²³.

(b) **Republican Liberal Democracies:** Unlike the Individual Liberal model, these states though they do grant individual liberty, “deny any collective or group right.”¹²⁴ Republican Liberal States seek to create a hegemonic character of all citizens, placing difficulties upon groups who wish to maintain their own cultural significance and practice their own language.

¹²³ S. Smooha, “Types of Democracy and Modes of Conflict Management in Ethnically Divided Societies,” *Nations & Nationalism* 8, no. 4 (Oct 2002 Supplement): 424.

¹²⁴ Ibid.

These states create their unique identity, solidarity and symbols, such as the United States with no tolerance toward those who wish to retain a contrary collective will.

- (c) **Consociational Democracies:** practiced only by few states such as Belgium, recognize group rights together with individual rights. Generally, these states have more than one ethnic minority, and often two balanced nations, when there is no attempt to create a common identity or to impose any restriction in practicing their features. These states allow certain amount of independence and tolerance toward ethnic nations.

“ Consociational democracies recognize group differences and extend collective rights in addition to individual rights. They allow the intergenerational preservation of cultural communities and function accordingly to the principles of co-nation between majority and minority, minority rights, ethnic autonomy for the minority, proportionality in resource allocation, power-sharing, veto power that enables the minority to block any decision detrimental to its vital interests, and politics of accommodation, compromise and indecision.

„125

- (d) **Ethnic democracy:** these states are based on ethnic significance rather than citizenship. Although minorities are granted civic rights and freedoms, they

¹²⁵Ibid.

are de facto, discriminated against by the majority who are preferentially granted privileges because of their ethnic origins. Accordingly, ethnic democracies are based on ethnic dominance where the state is identified exclusively to those who dominate and hold power. Here the state does not maintain neutrality toward minorities¹²⁶. Smooha describes the model:

“As a system in which two contradictory principles operate: the democratic principle,” making for equal rights and equal treatment of all citizens, and “the ethnic principle,” making for fashioning a homogenous nation-state and privileging the ethnic majority.”¹²⁷

According to Smooha, ethnic democracies unlike liberal democracies, does not treat citizens equally¹²⁸ and unlike in consociational democracy, minorities do not enjoy a certain amount of autonomy. Ethnic democracies are not, however, considered *Herrenvolk* democracies where the state is totally limited to a dominant ethnic and denied to others.¹²⁹

While focusing on the ethnic division in Israel, Smooha, holds that the Israeli conceptualization as a state belonging to the Jewish people creates the major division between Palestinians in Israel and Jews regarding citizenship rights, with a distinct subordination of the former. Focusing on the series of laws that maintain this subordination including the aforementioned Law of Return (1950) and the Citizenship Law (1952), makes it impossible for the state to be defined as a consociational

¹²⁶Ibid., 426.

¹²⁷Smooha, “Ethnic Democracy: Israel as an Archetype,” 200.

¹²⁸Ibid.

¹²⁹Ibid., 199.

democracy¹³⁰. Laws that define the state in strictly Jewish terms, using Jewish religious and cultural symbols further entrench the Jewish character of the State as superior to any other minority.¹³¹

Efforts that continue to be made by the Jewish Israeli political leadership today affirm Smootha's conclusion. Adalah – The Legal Center for Arab Minority Rights in Israel, a human rights legal center in Israel, has recently updated a report of 30 new laws legislated and pending in the Knesset that discriminate against Arab citizens.¹³² Among them The Nakba Law (2011)¹³³ which denies any organization or institution that receives public funds from commemorating the Nakba or addressing the day of the establishment of Israel with grief and acknowledging the Palestinian tragedy; or for supporting any activity that could be contrary to the Jewish characteristic of the state. Another example is the Nationality and Entry Into Israel Law (Temporary Order)- 2003¹³⁴ (hereinafter: “the Citizenship Law”), which effectively bans family unification by denying the right of citizenship and even residence to spouses of Palestinian citizens of Israel from the Occupied Palestinian Territory (OPT) or any other so-called “enemy states”. Adalah petitioned to the Supreme Court on behalf of Palestinian families whose residency had been revoked arguing that the blanket ban has a disproportionate impact on Palestinian citizens of

¹³⁰ Ibid., 206.

¹³¹ Ibid., 220.

¹³² Adalah, October 2012. “New Discriminatory Laws and Bills in Israel.” Available online at:

http://adalah.org/Public/files/English/Legal_Advocacy/Discriminatory_Laws/Discriminatory-Laws-in-Israel-October-2012-Update.pdf

¹³³ The Nakba Law enacted on 22 March 2011.

¹³⁴ The Nationality and Entry to Israel Law (Temporary Order) – 2003. Passed by the Knesset on 31 July 2003 and amended on 2007 expanding the blanket ban to “enemy states” targeting families and spouses from neighbor countries: Syria, Lebanon, Iraq and Iran.

Israel thus, violating their basic right to family life, dignity and the right to equality. The Supreme Court upheld the constitutionality of the Citizenship Law in a majority of six Judges, while 5 dissenting judges found the law to be unconstitutional due to its discriminatory basis and severe impact on constitutional norms of equality and family life¹³⁵.

Further, unequal resource and discretionary powers entrusted to various government ministries and institutions - including budget policies, the allocation of land and resources, and the implementation of laws - results in significant de facto discrimination between Jewish and Palestinian citizens. Arab municipalities receive a considerably less public funds allocated per resident than Jewish municipalities or even as compared to Jewish settlements in the OPT. Similarly, the Ministry of Religious Affairs only allocates a very small percentage of its budget to the Arab Muslim, Christian, and Druze religious communities. Such disproportionate allocation of funds extends to all special projects such as the renewal and development of neighborhoods and improvements in educational programs, services, and facilities¹³⁶. As to land policies, since the establishment of the state of Israel in 1948, land policies were and still administered exclusively by the dominant Jewish majority in Israel. It is essential to stress that the Palestinian Arab population that constitutes 20% of the entire population in Israel own only 3% of the land¹³⁷. Furthermore, no new Arab towns or villages have been established since 1948, save for 7 reservation-like urban townships in which to concentrate the Arab Bedouin community in the Negev

¹³⁵ HCJ 466/07, MK Zahava Galon v. The Attorney General, et al. (decision delivered on 11 January 2012)

¹³⁶ Smooha, "Ethnic Democracy: Israel as an Archetype," 220.

¹³⁷ Amnesty Annual Report (68th Session of the UN Committee on the Elimination Of Racial Discrimination (CERD), n.d.), 24.

(Naqab), constantly reducing their access to land, through systematic exclusion from land development and housing projects¹³⁸. The Jewish Agency and the Israeli Land Administration are the exclusive authority to allocate and distribute lands in Israel.¹³⁹ In the fundamental issue of land ownership, Arabs are purposefully excluded from participating in public policies and decision-making processes. Eventually, the laws and policies regarding land allocation result in the severe restriction and housing crisis for Palestinian citizens living in existing towns where there is no possibility of expansion. The result is large-scale construction in current villages and cities without proper permits facing constant risk of administrative home demolition sanctions.

The latest surveys in Israel show the deep gaps between the two communities in all areas of public life. Adalah's *Inequality Report* published in 2011 highlights these disparities¹⁴⁰. The Arab community's average gross monthly income in 2008 was \$1,465 as compared to \$2,150 average gross monthly income for the Jewish community – a difference of 30%¹⁴¹. The representation of Palestinian citizens within the Israeli government agencies is, as expected, very minimal. In the Housing Ministry, one of the most fundamental ministries in Israel, of 730 employees only 10 employees are Arab¹⁴². The deliberate efforts, through state policies and political mechanisms, to establish that the Palestinian community in Israel would be treated as subordinate to the Jewish community has created systematic and institutionalized discrimination. The Jewish character of the state of Israel prevents all “non-Jews”

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Adalah, “The Inequality Report,” March 2011. Available online at: http://www.adalah.org/upfiles/2011/Adalah_The_Inequality_Report_March_2011.pdf

¹⁴¹ Ibid., 19.

¹⁴² Ibid., 28.

from integration; thus, they are excluded from state power positions and consequently limit their effective participation in public and political spheres.

The International Framework

Israel is party to the numerous international human rights treaties, including key treaties containing basic protections against discrimination, as well as legal obligations to ensure equality and minority rights. Accordingly, Israel is bound to the UN monitoring bodies and committees in compliance with its obligations set forth in these conventions. Relevant to this discussion is the ICCPR¹⁴³, CERD¹⁴⁴ and the International Convention Economic, Social and Cultural Rights (ICESCR)¹⁴⁵. Following its periodic reports, Israel claims to fulfill basic norms of equality provisions and most importantly complying with basic norms of non-discrimination. Israel argues that the current Basic Laws (which fail to explicitly guarantee the right to equality) “have continued to offer a wide ranging effective protection and remedies for the basic rights protected by the Covenant”¹⁴⁶. However, various UN Committees, including the Human Rights Committee (HRC), responsible for monitoring compliance with the ICCPR found that “the Basic Law: Human Dignity and Liberty (1992) which serves as a [partial] bill of rights”¹⁴⁷, is unsatisfactory in the absence of equality and non-discrimination provisions¹⁴⁸. The HRC recommends that Israel:

¹⁴³ The International Convention on Civil and Political Rights, signed by Israel on December 1966, ratified on October 1991.

¹⁴⁴ Signed by Israel on March 1966, ratified on January 1979.

¹⁴⁵ Signed by Israel on December 1996, ratified on October 1991.

¹⁴⁶ Israel Third Periodic Report to the Human Rights Committee, 21 November 2008 (CCPR/C/ISR/3)

¹⁴⁷ UN Human Rights Committee (HRC) Concluding Observation of 2010 CCPR/C/ISR/CO/3, Para. 6

¹⁴⁸ Ibid.

“amend its Basic Laws and other legislation to include the principle of non-discrimination and ensure that allegations of discrimination brought before its domestic courts are promptly addressed and implemented”¹⁴⁹.

Similarly, the Committee for the Elimination of Racial Discrimination, which monitors the implementation of CERD, criticized the ongoing structural discrimination regarding the Palestinian minority¹⁵⁰. The Committee raised various fundamental concerns:

- The lack of constitutional norms that emphasize the principle of equality and non-discrimination.¹⁵¹
- The Jewish identity of Israel limits the ability of other nationalities to flourish and to be treated equality, and Israel should revoke any privileges that serve the majority and Jewish citizens only.¹⁵²
- The ‘Quasi-governmental’ status of institutions like the Jewish Agency, the World Zionist Organization, and the Jewish National Fund, which exclusively mandate lands, housing and other crucial and vital services to the benefit of the Jewish community in Israel, allocates resources and appoints representatives unequally.¹⁵³
- The Citizenship Law, which limits the possibility granting Palestinian citizens from the Occupied Territories Israeli citizenship and residence permits through family unification, is directed against a national group,

¹⁴⁹ Ibid.

¹⁵⁰ UN Committee for the Elimination of Racial Discrimination (CERD) Concluding Observation of 2007, CERD/C/ISR/CO/13

¹⁵¹ Ibid para. 16

¹⁵² Ibid para.17

¹⁵³ Ibid para. 19

which is incompatible with the Convention, in particular the obligation of the State party to guarantee the notion of equality.¹⁵⁴

Following its previous conclusions, the CERD recent report points out to the fact that Israel did not ease the continuous structural disparities between Jews and non-Jews¹⁵⁵, as the Committee points out:

“... the socio-economic gap between Jewish and non-Jewish communities remains worrying. It is of great concern that the two communities often continue to be compartmentalized, with one accessing education in Hebrew in Jewish schools and the other often living in separate municipalities and attending Arabic-language schools. Such separation is an obstacle to uniform access to education and empowerment. The Committee is particularly concerned at the continued low level of education and managerial employment of non-Jewish women in the private and public sectors”¹⁵⁶.

Despite the international framework and strong condemnation of the UN Committees, Israel has not taken effort to address the disparities between its citizens, and instead continues to perpetuate an unequal status quo. Maintaining the illusion of equality, however, remains critical to the presentation of democratic values and thus, new legislation frequently uses neutral language that belies the structural inequality and discrimination.

¹⁵⁴ Ibid para.20

¹⁵⁵ The Committee for the Elimination of Racial Discrimination concluding observation of 2012 on Israel (CERD/C/ISR/CO/14-16)

¹⁵⁶ Ibid para. 19

One of the pending bills proposed by the Knesset: The Rights of Those who Performed Military or National Service Bill (2010)¹⁵⁷, attempts to grant additional benefits and privileges for those who would serve the Army or perform a national service. The Palestinian minority, which is exempted from Military Service by law, due to historical and geopolitical circumstances, is excluded from those benefits. Similarly, in a recent case, the Israel Land Administration (ILA) issued a policy of conditioning bids for land on having performed military service. Nazareth, which is one of the largest Palestinian villages in Israel, is therefore excluded from housing plans. Eventually, the ILA froze the land sale policy when Adalah submitted a petition on behalf of the Mayor of Nazareth¹⁵⁸. Deterioration of the rights of Palestinian citizens is often halted through petitions to the Supreme Court; yet, the cases alone cannot address the structural discrimination.

One of the landmark decisions of the Israeli Supreme court known as “Qa’dan decision” reveals the true extent of structural discrimination and the lack of proper representation mechanisms for Arab citizens in Israel and their ineffective participation in policy making. The case revolves around a newly established town by the Jewish Agency called “Katzir” which precluded a Palestinian Arab citizen of Israel from living with his family in this town, based solely on his ethnicity and nationality. Former (emeritus) President of the Supreme Court, Justice Aharon Barak held that segregation and discriminatory policies cannot be tolerated, and finding that

¹⁵⁷ Legislative bill no. P/18/2405

¹⁵⁸ Administrative Petition 21030-11-12 Municipality of Nazareth vs. Israel Land Administration; petition submitted to the Nazareth District Court on 12 November 2012.

the ILA acted illegally¹⁵⁹. Despite the welcome outcome, the decision reveals the true nature of policy making and the status of minority collective rights in Israel, and has recently been overturned by the newly enacted “Admissions Committee Law.”¹⁶⁰ The new law gives small communities through admission committees the power to select applicants for residency according to their “suitability”, “lifestyle and social fabric of the community”, providing (approximately 450) communities, the power to reject potential applicants according to their ethnicity, nationality, gender, and other invalid grounds. The law effectively overturns the “Qa’dan” decision allowing severe discrimination against Arabs, and other marginalized groups such as gays, disabled people, single parents and others. Discriminatory policies persist, because the main obstacle towards realizing group rights of minority is the structural racism and discrimination that is foundational to the State of Israel and inherent in its characterization as a “Jewish state.” However, within the principle of effective participation is the opportunity, as demonstrated in other regions around the world, to challenge the fundamental discrimination, by guaranteeing that the will, interests and needs of the minority community are central to any decision-making processes.

¹⁵⁹ HCJ 6698/95, Qa’dan v. The Israel Land Administration, et al., P.D. 54(1) 258, decision delivered March 2000.

¹⁶⁰ The Law to Amend the Cooperative Societies Ordinance (no. 8) (2011) (“The Admissions Committees Law”) enacted on 22 March 2011.

The European Context and the Roma Integration

The European context provides an important example for applying participatory standards set forth in the European Convention on Human Rights, particularly, the attempt to address the rights of the Roma community through intensive resolutions and policies carried out by the OSCE and the Council of Europe. Similar to the situation of the Palestinian minority in Israel, severe structural discriminatory laws and policies especially in the area of education and unemployment¹⁶¹ keep Roma far away from participation and influencing policies. Here, the integration of the Roma in participation in decision-making has been found to be the best available means towards addressing the structural inequality. In 1995, the principle of effective participation was codified as a European principle through the Framework Convention for the Protection of National Minorities, which set forth obligations among state parties to promote minority rights and integrations as means to promote their participation in society.

Another major effort, carried out by the OSCE and the High Commissioner on National Minorities (HCNM) resulted in the Lund Recommendations on the Effective Participation of National Minorities in Public Life adopted in September 1999¹⁶². These recommendations were adopted to give substantive meaning to the Framework Convention and facilitate the adoption of special measures. This document stresses the notion of effective participation as vital tool for ensuring peace and security. These recommendations contain specific and special representation arrangements for national minorities including:

¹⁶¹ Bernard Rorke, Foreword to Review of EU Framework National Roma Integration Strategies (2012), 4.

¹⁶²“The Lund Recommendations on the Effective Participation of National Minorities, 1999.”

- Reserved number of seats or parliamentary committees¹⁶³;
- Special measures for minority participation in civil service¹⁶⁴;
- Advisory and consultative bodies for channeling dialogues¹⁶⁵; and
- Territorial and non-territorial arraignments of self-governance¹⁶⁶.

Despite these various tools aimed at eliminating structural disparities and inequalities, Roma face many challenges to overcome their current status. Nevertheless, the European efforts to remedy the systematic exclusion of Roma minorities across Europe has been carried out through effective participation standards and mechanisms that would transition the status of Roma minorities from a vulnerable excluded community to a more dynamic community part of European countries domestic policies and laws.

¹⁶³Ibid., 8.

¹⁶⁴Ibid.

¹⁶⁵Ibid., 10.

¹⁶⁶Ibid.

The Inter-American Court of Human Rights

Similar to the European context, the Inter American Court of Human Rights in a landmark decision recognized that the duty to consult with the local indigenous community constitute a general principle of international law part of effective participation standards. In the case of *Sarayaku*¹⁶⁷, the Court held that the state is under an obligation to consult with the indigenous community and specifically to initiate “a true and genuine dialog as part of the consultation process in order to reach an agreement”¹⁶⁸. The Court also emphasized that the duty to consult may be insufficient when a policy or state action may affect the indigenous community’s lands and territories. In this matter, the court held that Ecuador had violated the collective rights of Sarayaku tribe to be consulted before granting oil concessions in the community territories to a third party company.

The IACtHR held that state parties to the American Convention are obliged to obtain a “free, prior and informed consent according to [the indigenous communities] customs and traditions”¹⁶⁹ when administrative or legal action may affect their lands. Major implication in this decision give weight to the consulting mechanisms as such to be carried in a way not to override vulnerable and indigenous communities collective rights, especially in those matters which affect their life

¹⁶⁷ *Kichwa Indigenous Community of Sarayaku v. Ecuador*, Inter-Am. Ct. H.R. (ser. C) No. 245, (June 27, 2012).

¹⁶⁸ Lisl Brunner and Karla Quintana, “The Duty to Consult in the Inter-American System: Legal Standards After Sarayaku” 16, no. 35, *American Society of International Law* (November 28, 2012).

¹⁶⁹ *Ibid.*

Effective Participation standards and the Palestinian Minority

1994 marks one of the major turning points in the history of the Israeli Jurisprudence. The Israeli Supreme Court engaged in judicial activism changing the court role as a guardian of the rule of law. The Supreme Court in the revolutionary ‘Mizrahi Case’¹⁷⁰ held that the Basic Laws enjoy a higher constitutional status than ordinary laws. Therefore, the Supreme Court is vested with powers to guarantee the rule of law by delivering judicial review. Most importantly, the court is empowered to strike down ordinary laws that violate the norms set forth in the Basic Laws. Judge Barak opened his decision by these words:

“In March 1992, the Knesset enacted Basic Law: Freedom of Occupation and Basic Law: Human Dignity and Liberty. The enactment of these two Basic Laws effected a substantive change in the status of human rights under Israeli law. Such rights became constitutionally protected and were accorded supra-legislative constitutional status. They cannot be changed by □regular‘ legislation. A regular law cannot infringe a protected human right unless the constitutional requirements set forth in the Basic Law have been met. The failure of a regular law to meet those requirements renders it unconstitutional. Such a law is constitutionally flawed and the Court may declare it void.”¹⁷¹

¹⁷⁰ United Mizrahi Bank v. Migdal Cooperative Village (CA 6821/93, 1908/94, 3363/94)

¹⁷¹ Ibid. p.139

Despite the intervention and jurisprudence of the Israeli Supreme Court that aims to protect the rights of minorities, the deeply rooted discriminatory structures in Israel, with a tendency to preserve Jewish supremacy, makes the judicial system alone insufficient, and even, insofar as it is tied to such structures, reluctant to fully remedy the discrimination. Effective participation is a mean to overcome the “inherent unfairness” and the inability of minorities and vulnerable communities to take part in the decision-making that formulates and preserves those structures¹⁷².

Basic participatory models are insufficient to raising the status of Palestinians in Israel from their second-class citizenship. The Lund recommendations give wide insight on the various mechanisms that could secure effective participation,¹⁷³ however, the challenge is integrating such mechanisms into the purposefully divided society. No doubt, Israel was established in hostile circumstances, while the Jewish people were struggling for a homeland post World War II. Their past injustice and struggle to preserve their safety and existence led Israel emphasizing the Jewish supremacy as the main ideology. Yet, this characterization of Israel as a Jewish state, ultimately repressed the Arab citizens to the margins. Being as such, they are denied equal treatment and basic collective rights according to Israel’s obligations in International Human Rights Conventions. Neither usual democratic participatory mechanisms nor legislative attempts to amend the Basic Law: Human Dignity and Liberty have introduced any significant change that would ease the disparities or bring a newly constitutional order guarantying basic equality norms to all citizens.

Thus, scholars and local human rights organizations have regularly expressed their views demanding a new constitutional order. Adalah, for example, proposed one

¹⁷²Ghai, *Public Participation and Minorities*, 5.

¹⁷³*Ibid.*, 12.

model of a “new democratic constitution”¹⁷⁴ aligning the current Basic Laws structure to International Human Rights norms. One of the justifications for this compelling effort is found in the preamble of the “new constitution”:

“In order to build an equal and democratic society, free of repression and violence, and as a basis for historic reconciliation between the State of Israel and the Palestinian people and the entire Arab nation, the State of Israel must recognize its responsibility for past injustices suffered by the Palestinian people, both before and after its establishment. The State of Israel must recognize, therefore, its responsibility for the injustices of the Nakba and the Occupation; recognize the right of return of the Palestinian refugees based on UN Resolution 194; recognize the right of the Palestinian people to self-determination; and withdraw from all of the territories occupied in 1967.”¹⁷⁵

And it follows:

“The policies and practices of Israeli governments have caused severe injustice to the Palestinian Arab minority since 1948, some of which continues today, including this minority’s physical detachment from its people and nation, the uprooting and destruction of villages, the demolition of homes, the imposition of military rule until 1966, the massacre of Kufr Qassem in 1956, the killing of young people during the first Land Day in 1976 and in mass protests of October 2000, the confiscation of properties

¹⁷⁴ “The Democratic Consitution” drafted by Adalah on March 2007. Available online:

http://www.adalah.org/Public/files/democratic_constitution-english.pdf

¹⁷⁵ Ibid., 4.

from the Muslim Waqf, the expropriation of land, the non-recognition of Arab villages, the separation of families, policies of institutional discrimination in all fields of life, and the exclusion of the Arab minority based on the definition of the state as Jewish. Therefore, the following constitutional proposal determines that the basic rights of the Arab minority include: the return of land and properties on the basis of restorative justice, effective participation in decision-making, the fulfillment of the right to cultural autonomy and the recognition of the Arabic language as an official language in the State of Israel.”¹⁷⁶

One of the key provisions found in the proposed constitution offers changing the characteristic of Israel as a multicultural state, which entitles minorities “appropriate representation in all of the governmental authorities of the state,”¹⁷⁷ most importantly, a provision which guarantees equal protection before the law to all citizens¹⁷⁸. Accordingly, this mixture of alternative schemes could lead to adopting highly valuable standards of effective participation, treating each citizen equally and eliminating majoritarian dominance and suppression.

However, such a restructuring can only be considered the end goal. Within the current status, effective participation standards are needed in order to eliminate discriminatory patterns and allow a breakthrough towards the new constitutional, legal and political order.

¹⁷⁶ Ibid., 5.

¹⁷⁷ Ibid., 9. Article 18(H).

¹⁷⁸ Ibid., 11. Article 24.

Conclusion

The Palestinian Community inside Israel suffers from de-facto and de-jure forms of discrimination including, unequal resource allocation and limitations in towards effective participation in decision-making processes. The transition from a majority of the population in “Palestine” before 1948 to a minority after the establishment of Israel created complicated situation. On the one hand, being part of the Palestinian population, they were seen as a hostile minority, which threatened the existence of the State of Israel. The Jewish majority in Israel sought to exclude the Palestinian minority from decision-making policies and administration. On the other hand, being part of the population within Israel, the Palestinian minority was able to progress and maneuver through these considerable limitations, and have developed with the few resources available. Nevertheless, their participation in public life is narrowly tailored by Israel in order to maintain and preserve Jewish supremacy in state ministries, institutions and administrative positions. Effective participation mechanisms are needed to counter discriminatory policies and laws, particularly in the absence of constitutional protection that promote equality and non-discrimination norms. However, given the entrenched nature of the discrimination, normal equality and non-discrimination provisions are insufficient to bring the Palestinian minority closer to meaningful participation in public life.

Recognizing the rights of the Palestinian minority as integral part of the whole society demands that special safeguards for the minority allows full and effective participation in public spheres. Principles such as informed consent, as demonstrated in the case before the IACtHR is needed to guarantee their interests. Similarly, where discriminatory laws and policies exist, minority veto

mechanisms are essential to guarantee their collective rights and consequently guarantee Israeli law and policies consistent with its obligation set forth in the International Human Rights Conventions. This work offered the basic justification for providing the Palestinian minority such mechanisms due to their characteristics as a native and local homeland minority. Their political, economic and cultural practice has been limited after the establishment of Israel and was subject to systematic exclusion in public spheres. Israel constantly rejects and restrains their progress due to hostilities that characterize the Israeli-Arab conflict. Therefore, providing adequate safeguards and insuring their effective participation in public sphere could overcome the constant tensions between the two communities. Multicultural approach, tolerance, consultancy, partnership, cooperation and mutual power sharing are needed in building equal and democratic society in Israel.

Current discriminatory laws and policies mentioned in previous chapters, targeting the Palestinian minority, illustrate their inability to bring a new political and public order. As previously argued, normal participation standards cannot eliminate structural exclusion and provide adequate safeguards in democratic procedures. Thus, the Palestinian minority in Israel must be able to participate effectively both in terms of the opportunity to make substantive contribution to decision-making processes as well as in terms of the effect of those contributions in order to institute a new legal order.

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