THE ARAB-PALESTINIAN COMMUNITY IN ISRAEL: A TEST CASE FOR COLLECTIVE RIGHTS UNDER INTERNATIONAL LAW

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INTRODUCTION

The granting of collective rights to various minority groups, such as national or indigenous minorities, is one of the central tenants of international minority rights law. Whereas individual rights are guaranteed to each member of a group as an individual, collective rights apply to minority groups that are set apart from the majority and therefore derive their power from group differentiation. In order to realize collective rights, the state must implement permanent or semi-permanent special measures; these measures assure appropriate protection of a minority group’s unique and often fragile identity and interests. While the specific rights vary depending upon the nature of the group, they are generally conferred upon a minority due to its uniqueness as a group. Such rights, including group-based autonomy, enable such groups to preserve their identities and to grow and develop as a collective.

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4. See Kymlicka, supra note 2, at 149–50; Kymlicka, supra note 3, at 19. Special measures for groups generally provide them with legal protection, both on individual and collective levels, with the aim of achieving equality with majority groups. Minority groups need these protections as they are the frequent target of discriminatory actions and pressure to assimilate. Kymlicka, supra note 2, at 149–50; Kymlicka, supra note 3, at 19.

449
Therefore, recognition of these rights is a key demand of such groups and this is reflected in international legal standards. Recent international instruments—particularly the 1992 U.N. Declaration on Minorities and the 2007 U.N. Declaration on the Rights of Indigenous Peoples—have greatly expanded and enhanced the understanding of minority rights. The Arab-Palestinian minority in Israel—some twenty percent of the country’s citizens—constitutes a substantial national and indigenous minority. Like other minorities globally, the Arab-Palestinian indigenous minority in Israel has used these international documents to guide its own thinking about suitable frameworks for its personal minority accommodation as citizens of a state that define themselves as Jewish. This is primarily illuminated by a series of internal documents that clarify the Arab-Palestinian’s vision for itself as a collective. Aligning with the tenets of current international rights discourse, full realization of the Arab-Palestinian community’s vision for its future hinges on the granting of collective rights.

This Article argues for the need to promote individual and group-based equality for the Arab-Palestinian minority in Israel. Part I offers an introductory description of the Arab-Palestinian minority in Israel, placing this minority in the context of the current international rights regime. Part II summarizes the current international law regime concerning indigenous minorities and its relation to Arab-Palestinians specifically. Part III then analyzes the

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particular special rights demands made by the Arab-Palestinian community. Part IV concludes.

I. THE UNIQUE CASE OF PALESTINIANS WITHIN ISRAEL

Historically, all Palestinians share the same ethnic and cultural background. Palestinians currently living in historical Palestine may be divided into three broad groups that each live under three different legal and political systems. These groups are: (1) stateless Palestinians living in the West Bank and Gaza under a mixture of Israeli military rule and self-rule; (2) Palestinian Jerusalemites, or Palestinian residents of Israeli-occupied and annexed East Jerusalem; and (3) Palestinians living in Israel—minority citizens in Israel since the 1948 war. This final group will be the focus of this Article.

In the aftermath of 1948, nearly 160,000 Arab-Palestinians found themselves within the borders of the newly established State of Israel. They, like a lot of their relatives outside of Israel’s borders, were not only stunned by the Arab defeat but also left without national, political, and societal leadership. This group’s size has doubled roughly nine times since 1948, totaling about 1.4 million today, though its percentage in relation to the total Israeli population has remained consistently at about eighteen percent. Arab-Palestinians, a substantial native, linguistic, religious, and national minority, have consistently resided in three main geographical areas within Israel: the Galilee and Triangle regions in

13. Historical Palestine is known today as the State of Israel and the Occupied Territories of the West Bank and the Gaza Strip.
17. Pappe, supra note 14, at 18–20; Lustik, supra note 16; Ghanem, supra note 8.
the north and center of the country and the Naqab in the south.\textsuperscript{20} Approximately eighty percent of the Arab-Palestinian community lives in about seventy towns and villages, which are entirely Arab; the remainder reside in several mixed Arab-Jewish cities, primarily Haifa, Acre, al-Led, Ramleh, and Tel Aviv-Jaffa.\textsuperscript{21}

Legally, Israel defines itself as a “Jewish and democratic” state.\textsuperscript{22} However, nearly one-fifth of Israel’s citizens belong to the Palestinian national group, with their own ethnic, cultural, religious, and linguistic characteristics.\textsuperscript{23} While they have been granted Israeli citizenship, a contested geo-political situation and unresolved conflict with the Palestinian people have resulted in a situation in which Arab-Palestinians with Israeli citizenship are regarded with hostility and suspicion by the Jewish majority.\textsuperscript{24} In many cases, the Jewish majority views its Palestinian minority as part of the Arab world and often as enemies of the state.\textsuperscript{25} Not surprisingly, this atmosphere has forced the Arab-Palestinian minority to regularly confront its status and role within Israeli politics and in the region at large.\textsuperscript{26}

Similar to other minorities globally, Arab-Palestinians face a great deal of discrimination. By every measurable standard—income level, education, infrastructure, employment, housing, and the level of social services—Arab-Palestinian citizens trail their Jewish counterparts.\textsuperscript{27} They are excluded from positions of influence

\begin{footnotes}
\footnoteref{20} See Ghanem, supra note 15, at 2.
\footnoteref{21} Id.
\footnoteref{23} See Ghanem, supra note 15, at 2; Pape, supra note 14, at 94.
\footnoteref{26} Dan Rabikowitz & Khawla Abu-Baker, Coffins on Our Shoulders: The Experience of the Palestinian Citizens of Israel 2–12 (2005).
\footnoteref{27} See Gershon Shafir & Yoav Peled, Being Israeli: The Dynamics of Multiple Citizenship 281 (2002) (examining the economic and social struggles within the Arab-Palestinian minority population in Israel); see also Hassan Jabareen, Hobbesian Citizenship: How the Palestinians Became a Minority in Israel, in Multiculturalism and Minority Rights in the Arab World 189–218 (Will Kymlicka & Eva Pfösl eds., 2014) (discussing the status and historical development of the Arab Palestinian citizens of Israel); Alaa Hamdan & Yaser Awad, Sikkuy, The Equality Index of Jewish and Arab Citizens in Israel (Ali Haider ed., 2009), available at http://www.sikkuy.org.il/publication_cat/equality-index/?lang=EN.
\end{footnotes}
and leadership and are severely underrepresented in government institutions as well as in the general public sphere.\textsuperscript{28} While Arab-Palestinian citizens have the right to select their own representatives for national Parliament, these Members of Parliament often serve as nothing more than a fig leaf for political participation; they are viewed as representatives of a “hostile” constituency, which cannot and has not been accepted into any governing coalition in Israel.\textsuperscript{29}

The Arab-Palestinian minority in Israel is unique in that it is an indigenous community that has been living in its homeland long before the inception of the State of Israel.\textsuperscript{30} Prior to 1948, this minority, along with the rest of the Palestinian people, was part of the majority group.\textsuperscript{31} For the Arab-Palestinians, the events that resulted in the establishment of the State of Israel are considered to be a national tragedy, known in Arabic as the “Nakba,” or catastrophe.\textsuperscript{32} These historical circumstances have had a determinative impact on how the Palestinian group views itself—as a distinct ethnic, linguistic, cultural, and religious group.\textsuperscript{33} This rift between the two primary ethnic-national groups in Israel—the Jewish national majority and the Arab-Palestinian national minority—reflects the central schism in Israeli society today.\textsuperscript{34}

While the Arab-Palestinians define themselves as a distinct indigenous national group and perceive themselves as such, Israel’s

\textsuperscript{28}. G \textit{HANEM}, \textit{supra} note 15, at 163–65.
\textsuperscript{29}. \textit{Id.}; \textit{SHAFIR & PELED}, \textit{supra} note 27.
\textsuperscript{30}. \textit{See SAID}, \textit{supra} note 12, at 7.
\textsuperscript{31}. \textit{Id.}; \textit{PAPP ´E}, \textit{supra} note 14, at 19; \textit{see also KIMMERLING & MIGDAL}, \textit{supra} note 12, at 162–63 (discussing the history of Palestinians and Israelis).
\textsuperscript{32}. “An-Nakba” (the Catastrophe in Arabic) is the term used by Palestinians and Arabs to refer to the exodus and displacement of Palestinians from their land in the immediate aftermath of the founding of Israel in 1948. It is estimated that nearly eight hundred thousand Palestinians were driven from their homes into exile, either forcibly or in search of temporary refuge, becoming refugees in the Palestinian West Bank, the Gaza Strip, and the neighboring Arab countries. Palestinian society and the Palestinian way of life were largely destroyed. The tragic consequences of an-Nakba still reverberate today and fuel the Arab-Palestinian struggle for an independent state in the West Bank and Gaza. \textit{See PAPP ´E}, \textit{supra} note 14, at 19, 47–51.
\textsuperscript{33}. Contrary to indigenous minorities, immigrant minorities are generated by the transition of individual immigrants from their native land to another country. It is customary to view this voluntary transfer as a kind of consent by the individual immigrants to integrate and be absorbed into the new society. \textit{See Jabareen}, \textit{supra} note 9, at 350–51. \textit{See generally S. JAMES ANAYA, INDIGENOUS PEOPLES IN INTERNATIONAL LAW 95–215 (2004) (describing contemporary international norms relating to self-determination of peoples and minority groups).}

authorities regard Arab-Palestinian minority citizens as a collection of individuals or as religious groups.\textsuperscript{35} According to a strict reading of some Israeli legislation, each Arab-Palestinian on the individual basis is entitled to the same rights as every other citizen.\textsuperscript{36} Despite this, there remains substantial inequality on an individual basis.\textsuperscript{37} Over six and a half decades of legal, social, economic, and political exclusion have resulted in the Arab-Palestinian minority—about one-fifth of the population of Israel—being among the lowest echelons of society.\textsuperscript{38} Ongoing neglect and broken promises\textsuperscript{39} have resulted in profound frustration and served as the impetus for the formulation of the Future Vision documents outlined in more detail below.

Beyond individual rights for Arab-Palestinians, the prospects for Arab-Palestinians in Israel seeking collective rights are even bleaker. A preference for the Jewish majority has been ensconced in the law since the establishment of the state.\textsuperscript{40} Israeli law includes many provisions that openly and expressly provide privileges for the Jewish majority—as a group—over other citizens.\textsuperscript{41} As Israeli law currently stands, the best-case scenario for Arab-Palestinians ignores the existence of this distinct national group; the worst-case scenario is that it openly seeks to strip them of collective rights.\textsuperscript{42} Indeed, group-based discrimination is encoded into Israeli domestic legislation, and this has a determinative impact on the disadvantaged status of Arab-Palestinians and the relatively privileged status of Jews as a national group.\textsuperscript{43}


\textsuperscript{36} Note, for example, former Chief Justice Aharon Barak’s statement, as follows: Equality is among the fundamental principles of the State of Israel. Every authority in Israel, beginning with the State of Israel, its institutions and employees, must treat the various elements in the state equally. This is requisite from the Jewish and democratic character of the state and it is a function of the principle of rule of law, which is in force here. Thus, the state must honor and protect the fundamental right of every individual in the state to equal treatment.

HCJ 6698/95 Qa’adan v. Isr. Land Admin. 54(1) IsrSC 51, 64–65 [2000] (Isr.).

\textsuperscript{37} Jabareen, supra note 9, at 360.


\textsuperscript{39} Jabareen, supra note 9, at 381.

\textsuperscript{40} David Kretzmer, The Legal Status of the Arabs in Israel 62 (1990).

\textsuperscript{41} Jabareen, supra note 9, at 360.

\textsuperscript{42} For a more detailed overview of legislation, see Kretzmer, supra note 40; Jabareen, supra note 9.

\textsuperscript{43} Peled, supra note 24; Shafir & Peled, supra note 27, at 112–13.
One of the most blatant examples of the way in which Arab-Palestinians are excluded from the state relates to state symbols.\(^44\) Israeli law has established state symbols with formal legal status that have exclusive connections and significance to the Jewish majority.\(^45\) These include the country’s Flag, Emblem and Anthem Law of 1949\(^46\) and the State Seal Law of 1949.\(^47\) All of these symbols, the national flag, emblem, and anthem, derive from the Jewish national heritage and religion. The Israeli state anthem is *Hatikva*, or “the hope,” and its lyrics unequivocally refer to the Jewish-Zionist dream to live freely in the “land of Zion.”\(^48\) Its content makes Israel’s national anthem one that relates only to Jewish-Zionism—one that will never be able to serve as the anthem for Arab-Palestinian citizens.

The distribution of land, a point of particular significance generally for indigenous minorities and especially the Arab-Palestinian minority in Israel, also reflects discriminatory legislation and practice. Most land and housing in Israel is regulated by quasi-governmental organizations with mandates to serve the Jewish people.\(^49\) The World Zionist Organization, the Jewish Agency (Status) Law (1952), and the Jewish National Fund Law (1953) outline an agreement between the state and the mandated organizations, which gives legal support to the special status of the Jewish Agency and the Jewish National Fund (*Keren Kayamet LeIsrael*) in matters of land distribution.\(^50\) As quasi-governmental organizations, they have the authority to establish new residential areas.\(^51\) Accordingly, Jewish national institutions, which by definition solely operate for the benefit of the Jewish population, establish clear preferences for the Jewish majority.\(^52\) No comparable public body mandated to serve all citizens has been established, nor has legitimacy been granted to a voluntary Arab-Palestinian organization working on behalf of this national minority.\(^53\)

\(^{44}\) ADalah, *supra* note 35, at 63–64.
\(^{45}\) Jabareen, *supra* note 9, at 366–68.
\(^{46}\) Flag and Emblem Law, 5709–1949, 3 LSI 26 (1949) (Isr.).
\(^{47}\) State Seal Law, 5710–1950, 4 LSI 13 (1949–50) (Isr.).
\(^{48}\) Jabareen, *supra* note 9, at 366–68.
\(^{50}\) Id. at 157.
\(^{52}\) Id.
\(^{53}\) Jabareen, *supra* note 9, at 372–73.
This bias in favor of the Jewish majority also exists in areas such as religion, culture, and media. The Jewish Religious Services Law established a Religious Council in each local authority. These councils are authorized to provide religious services to Jewish residents. Each council consists of representatives of the Ministry for Religious Affairs, the local authority, and the local rabbinate in the region. No such state-sponsored religious councils serve Muslim or other religious communities within the Arab-Palestinian society. Israeli law also formally recognizes Jewish holy sites with no parallel recognition of religious sites significant to Arab-Palestinians. Furthermore, the Broadcasting Authority Law and the Second Authority for Television and Radio Law both require that institutions under their purview reinforce and instill Jewish values and heritage and reflect contemporary Jewish culture. This legislation, with no parallel legislation existing for the Arab-Palestinian minority, demonstrates a clear preference for one group over the other in Israel.

Such legislation, in addition to engendering feelings of alienation, establishes a lower social status for Arab-Palestinians in Israel. Given the sectorial nature in Israeli society, it is unlikely that such group-based preferences will be absolved in the near future. However, Arab-Palestinian citizens in Israel, in line with tenets outlined in the U.N. 2007 Indigenous Peoples Declaration, are hoping to garner equitable rights and privileges enabling this indigenous community to establish collective rights and carve out areas of local and internal self-determination within the larger domestic legal system.

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54. Id. at 376–77.
56. Id.
57. Id.
58. See Supreme Court Rejects Adalah’s Petition Demanding the Protection of Muslim Holy Sites in Israel Claiming that the Definition of Specific Sites as Muslim Is a “Sensitive Matter”, ADALAH (Mar. 16, 2009), http://adalah.org/eng/Articles/1038/Supreme-Court-Rejects-Adalahs-Petition-Demanding.
II. Evolving International Standards and Arab-Palestinian Indigenousness

Prior to examining bodies of international standards specifically relating to minorities, it is important to discuss international instruments’ views on equality—a value that underpins any discussion on rights. The right to equality and nondiscrimination is a well-established principle in international law. Articles 2 and 27 of the International Covenant on Civil and Political Rights (ICCPR) and Article 4 of the U.N. 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities both support not only equality but also the allocation of national budget resources according to the special needs of the minority group, rather than on a strict proportion basis. In the U.N. 2007 Declaration on the Rights of Indigenous Peoples, Articles 17(1) and 17(3) are particularly relevant. Under these principles, such minority groups may be entitled more than their raw population percentage of the national budget as a result of past and ongoing discrimination. Furthermore, such a national budget-

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64. See 1992 Declaration, supra note 62.

65. Id.; Thornberry, supra note 6, at 48, 50, 52.


67. See 2007 Declaration, supra note 61, arts. 17(1), 17(3) (“Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law” and “[i]ndigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.”).
ary division may be necessary to realize other rights such as the right to preserve one’s identity.\(^68\)

Despite these international equality standards, the rights of indigenous individuals as a collective have not been guaranteed. Three pieces of international instruments are central in this context to minority rights.\(^69\) The first is Article 27 of the ICCPR\(^70\) whose status as a binding resolution makes its implementation incumbent upon states. The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities\(^71\) and the 2007 Declaration on the Rights of Indigenous Peoples also hold particular significance as they deal specifically with minority group rights.\(^72\) However, while these later two docu-

\(^68\) In his Commentary on the 1992 Declaration, Professor Asbjørn Eide emphasizes Article 4.5 of the Declaration on Minorities, which grants minorities the right to “participate fully in the economic progress and development of their country.” Econ. & Social Council, Final Text of the Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art. 4.5, U.N. Doc. E/ CN.4/Sub.2/AC.5/2001/2 (Apr. 2, 2001) (by Asbjørn Eide). According to Eide, this provision should be read to include not only the negative right to freedom from discrimination in the economic spheres of life but also the positive obligation on states to integrate minority populations into the processes that determine the society’s future and development. Id. He notes that equal participation in the progress of society is critical to facilitating interaction, integration, and coexistence between majority and minority populations. Id. Equal participation also ensures that minority traditions are appreciated by the society-at-large and not relegated to museum pieces celebrated merely as historical fact. Id.

\(^69\) The emphasis on the disadvantaged socio-economic and political positions of minorities vis-à-vis dominant groups found in the definitions and descriptions developed by human rights nongovernmental organizations also reflect the recently changing conceptions of minority groups. See Janet, supra note 7, at 11 (“[M]inorities are ethnic, religious or linguistic communities, who do not necessarily constitute a numerical minority within a state, and who are non-dominant, usually discriminated against or marginalized, and, as a result, are less likely to have access to education and other opportunities. A key criterion is that of self-identification.”). Furthermore, Clive Baldwin, Chris Chapman, and Zoe Gray state as follows:

[A minority] is a group of people who believe they have a common identity, based on culture/ethnicity, language or religion, which is different from that of a majority group around them. A minority is often, but not always, defined as such with reference to their position within a country, but can also be defined with reference to a wider area (e.g. regional) or narrower area (e.g. by province). What matters is whether the minorities lack power—i.e. the ability to affect the decisions that concern them. It is those minorities that minority rights are designed to protect.


\(^70\) ICCPR, supra note 63, art. 27.

\(^71\) The 1992 Declaration is notable as the first international document dedicated solely to minority rights and for its emphasis on minorities as a collective. For a more detailed discussion, see Jabareen, supra note 66.

\(^72\) The 2007 Declaration was the first international legal document expressing the distinct rights of indigenous peoples whereby indigenous representatives also played a key role in the Declaration’s drafting and development. See 2007 Declaration, supra note 61.
ments are crucial and reflect international intentions at their best, they do not carry the same legal weight as the ICCPR.

The ICCPR establishes the legal concept of the collective for minorities within international law and imposes an onus upon states to actively work to protect the rights of such collectives. Article 27 of the ICCPR is key and reads as follows:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practi[c]e their own religion, or to use their own language.73

While a cursory reading would indicate that Article 27 is focused on individual rights, the legal analysis contained in its General Comment 23 makes it clear that Article 27 actually relates to minorities as collectives.74 Importantly, General Comment 23 notes as follows:

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. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group.75

No less importantly, despite Article 27’s negative formulation in its phrasing, these statements make it clear that there is a positive injunction on states to act. General Comment 23 continues as follows:

Although article 27 is expressed in negative terms, that article, nevertheless, does recognize the existence of a “right” and requires that it shall not be denied. Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.76

acknowledges that an emphasis on individual rights and integration, as expressed in previous documents, was ineffective in realizing the aspirations of indigenous peoples and, in addition to outlining rights, also includes a number of states obligations.

73. ICCPR, supra note 63, art. 27.
74. See H.R.C., CCPR General Comment No. 23: Art. 27 (Rights of Minorities), U.N. Doc. CCPR/C/21/Rev.1/Add.5 (April 8, 1994).
75. Id. art. 6.2.
76. Id. art. 6.1.
Furthermore, Article 27 indicates the type of rights envisioned: those primarily in the realm of identity including culture, religion, and language.\textsuperscript{77} Thus, Article 27 articulates a basis for minority groups to demand collective rights and for states to take proactive means to ensure the realization of those rights. This concept of “collective rights” and the nature of such rights is significantly expanded in the 1992 and 2007 Declarations as described below.

A. Identity Rights

Identity rights are regarded as primary group-based rights for minorities. As noted above, Article 27 of the ICCPR specifically mentions culture, religion, and language—all of which are fundamental to the right to identity.\textsuperscript{78} Article 1 of the 1992 Declaration emphasizes the importance of identity for minority groups when it opens with the following: “1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.”\textsuperscript{79} Further, Article 1 also encourages the adoption of active measures to ensure that this takes place when it states: “2. States shall adopt appropriate legislative and other measures to achieve those ends.”\textsuperscript{80} The 2007 Indigenous Peoples Declaration supports and expands on these ideas as it broadens the definition of identity.\textsuperscript{81} Its definition emphasizes a consideration of culture, education, religion, language(s), practices, and customs into what is considered part of an identity.\textsuperscript{82} Specifically, Article 11 deals with the preservation of culture, Article 12 relates to religious practice, Article 13 is primarily concerned with language, Article 16 addresses the media, Article 24 discusses health practices, and Article 33 notes the importance of group membership and identity.\textsuperscript{83} Undoubtedly, this level of detail reflects difficulties faced by indigenous peoples in their respective

\footnotesize{\begin{itemize}
\item \textsuperscript{77} ICCPR, supra note 63, art. 27.
\item \textsuperscript{78} See id.
\item \textsuperscript{79} See 1992 Declaration, supra note 62, art. 1.
\item \textsuperscript{80} Id.
\item \textsuperscript{81} See 2007 Declaration, supra note 61. See generally Anaya & Wiessner, supra note 7 (discussing the significance of the 2007 Declaration).
\item \textsuperscript{83} 2007 Declaration, supra note 61, arts. 11, 12, 13, 16, 24, 33.
\end{itemize}}
countries; indeed, indigenous peoples are some of the most
maligned and disadvantaged of all minorities.\textsuperscript{84} Majority groups
often expose indigenous peoples to significant pressures and
demands in areas such as the labor market, public bureaucratic
system, political system, consumer forces, and language of mass
media.\textsuperscript{85} This type of atmosphere can lead to assimilation and cul-
tural erosion, which weaken an indigenous people’s unique cul-
tural-national identity and the ability of their members to preserve
that identity.\textsuperscript{86} For this reason—and because their presence might
often threaten groups who are newer to the same geographical
region—indigenous groups are often most in need of added pro-
tections to level the playing field.\textsuperscript{87}

B. Political Participation

Another crucial collective right for indigenous groups relates to
participation in the national life of the country of citizenship. Par-
ticipation in national life is essential to ensure the realization of
other rights, which includes fair and equitable distribution of
national and public resources such as land and national budgets—
on both an individual and collective basis.\textsuperscript{88} The state, in its role as
“trustee,” oversees the distribution of such resources and, typically,
access to them and guaranteeing fair allocation of them only take
place when minority groups achieve appropriate representation in
national political and public bodies.\textsuperscript{89}

Accordingly, both the 1992 and 2007 Declarations emphasize
the political participation of minorities. Specifically, Article 3 of
the 1992 Declaration states: “Persons belonging to minorities have
the right to participate effectively in decisions on the national and,
where appropriate, regional level concerning the minority to
which they belong or the regions in which they live, in a manner

\begin{thebibliography}{9}
  \bibitem{84} See id.
  \bibitem{87} Wiessner, \textit{supra} note 82, at 109.
  \bibitem{89} See Jabareen, \textit{supra} note 1, at 661–63.
\end{thebibliography}
not incompatible with national legislation.”90 Concurrently, Article 5 of the 2007 Declaration notes, “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the state.”91 Providing further instruction are the 2007 Declaration’s Articles 1892 and 19,93 which emphasize consultation and participation, combined with recognition of indigenous groups’ representative leaders. Furthermore, Articles 31 and 32 outline spheres of control granted to indigenous peoples. Article 31 advocates for the protection and development of the cultural life of indigenous groups.94 Finally, Article 32 relates to strategies for development and usage of lands held by indigenous peoples.95 Overall, guaranteed political participation on the national level leads to a strengthening and enhancing of other rights and protections.96

90. 1992 Declaration, supra note 62, art. 2(3).
91. 2007 Declaration, supra note 61, art. 5.
92. Id. art. 18 (“Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.”).
93. Id. art. 19 (“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”).
94. Article 31 of the 2007 Declaration states as follows:
1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. 2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.
Id. art. 31.
95. Article 32 of the 2007 Declaration states as follows:
1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.
Id. art. 32.
96. See Jabareen, supra note 1.
2015] Arab-Palestinian Community in Israel: Collective Rights 463

These rights are not meant to come at the expense of, or to replace, basic citizenship and political rights, nor compromise influence on the national level. The 2007 Declaration includes a crucial imposition upon states to involve indigenous peoples in the state’s decision-making bodies through fair and meaningful representation.97 The Declaration seems to envision new structures of governance within the framework of existing national systems, which would grant self-governing to indigenous peoples in specific areas of life.98

C. Right to Autonomy and Self-Determination

Importantly, the 2007 Declaration, in contrast with previous international instruments, calls for various levels of internal autonomy for indigenous minorities.99 Beyond autonomy’s role in identity preservation, indigenous groups view self-determination and autonomy as prerequisites for the realization of other social, political, legal, and economic rights.100 Self-determination also implicitly affirms the nature of indigenous peoples as a distinct collective and grants them their right to assert their legal standing as such.101 This both safeguards the unique characteristics of such groups and enables them to compete on equal footing with dominant social groups.102 The provision of rights of this nature can help the state

97. 2007 Declaration, supra note 61, art. 5 (“Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”).
100. See id.
102. Vijapur discusses the following:

Certainly the most challenging claim to self-determination comes from indigenous peoples. Their claim relies on the fact that they have a traditional form of government and have specific rights over their traditional territories and thus are a ‘people’ entitled to self-determination. Since in most countries they live on the margins of society, facing discrimination, exploitation, and dispossession, indigenous peoples seem particularly entitled to claim the right to self-determination.

Vijapur, supra note 3, at 387.
to overcome its inherent tendency to favor the culture, legal system, religion, and norms of the dominant social group and/or the group holding power. Furthermore, the creation of spheres of influence and legal protections for disadvantaged groups can mitigate the inherent imbalance between the “colonized” and the “colonizer.” For all of these reasons, self-determination is viewed as being an essential addition in the canon of international discourse for minority groups.

The right to self-determination is a prominent aspect of the 2007 Declaration and is repeated and emphasized throughout the document. While in the Declaration’s preamble this principle is general and rather undefined, subsequent articles outline its contours in more detail. Articles 3 and 4 advocate for self-steering within the confines of the existing political and social situation of any given country. Article 3 notes, “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.” Article 4 bolsters this point by granting indigenous peoples the right to self-governance as follows: “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.” Neither of these Articles suggests secession however; rather, they seek to define autonomy within the context of the structures of the existing state. The deliberate inclusion of autonomy clearly shows that calls for autonomy are not additional or optional rights, but are rather fundamental to full and genuine realization of indigenous peoples’ rights.

Beyond the general call for autonomy, autonomy in specific areas of life is also mentioned further into the 2007 Declaration.

103. See Kuppe, supra note 98, at 111–12.
104. Id. at 111.
105. 2007 Declaration, supra note 61, arts. 3, 4, 20, 23.
106. See id. pmbl. (“Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law.”).
107. See id. arts. 3, 4; see also Wiessner, supra note 82, at 98–99.
108. See 2007 Declaration, supra note 61, art. 3.
109. See id. art. 4.
110. See id. art. 20 (providing indigenous peoples with the right to “maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities”). Article 23 also states:
Undoubtedly, inclusion of these articles reflects an understanding of indigenous peoples as groups with their own distinct needs, interests, ways of life, histories, and narratives, and as deserving of the right to express themselves and control their own destinies no less than other groups within the same country.

D. Historical Rights

The 2007 Indigenous Peoples Declaration, unlike the 1992 Declaration, emphasizes the additional need for land rights and similar historical rights.\footnote{Anaya & Wiessner, supra note 7.} This parallels one of the defining features of indigenous peoples, as opposed to other minorities, in their connection to specific geographic regions.\footnote{Kuppe, supra note 98, at 107; see also Erica-Irene A. Daes, Standard-Setting Activities: Evolution of Standards Concerning the Rights of Indigenous People, U.N. Doc. E/CN.4/Sub.2/AC.4/1996/2, at 5 (Econ. & Social Council, Working Paper, 1996) (analyzing the concept of indigenous peoples).} Indeed, they may view their indigenousness through their historical relationship with and attachment to these lands.\footnote{Kuppe, supra note 98, at 107.} In this context, granting comprehensive collective rights is based on indigenous groups’ historical, national, religious, and cultural relationship with their native land.\footnote{Id.} This special relationship with native lands is critical to formulating the status and rights of such groups, from both a moral and international legal perspective.\footnote{See id.; Vijapur, supra note 3, at 388.} The formulation of the 2007 Declaration reflects this understanding as it recognizes indigenous notions of ownership and incorporates them into the text of the document.\footnote{See 2007 Declaration, supra note 61, arts. 26, 27.}

In addition, land use and the right to such lands were included within the 2007 Declaration because they are often prerequisites for the fulfillment of other rights including those of a cultural or religious nature.\footnote{Kuppe, supra note 98, at 107.} Therefore, one of the key factors motivating indigenous groups to fight for land rights and to gain access to traditional lands is to enable full realization of their group-based

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programs affecting them and, as far as possible, to administer such programs through their own institutions.\footnote{See generally id. arts. 5, 16, 34, 20, 23.}
rights. Given all of these factors, the 2007 Declaration contains a high degree of specificity regarding land ownership. Article 26, 27, and 30, taken together, illuminate the problems indigenous peoples face when asserting their land rights. These include, among others, land appropriation, military use of such lands, and difficulties in establishing ownership according to modern legal standards. The 2007 Declaration attempts to remedy such issues by outlining ownership rights, loss of lands, returns of land, and consultation regarding use of land.

Land rights, as conceptualized by the 2007 Declaration, are closely intertwined with historical rights, past grievances, past compensation, redress, and restorative justice. Accordingly, land is the primary vehicle for addressing all of these issues, as illustrated in Article 28, which outlines mechanisms for land no longer under the control of indigenous peoples. Article 28’s specificity regarding the definition of ownership and the means by which

119. See generally Anaya & Wiessner, supra note 7 (discussing collective rights and issues of land).
120. Article 26 of the 2007 Declaration states as follows:
Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.
121. Article 27 of the 2007 Declaration states as follows:
States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.
Id. art. 27.
122. Article 30 of the 2007 Declaration states as follows:
1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. 2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.
Id. art. 30.
123. See id. arts. 26, 27, 30.
124. Id.
125. See Jabareen, supra note 1, at 659.
126. Article 28 of the 2007 Declaration states as follows:
indigenous people should be compensated is striking. Article 11(2) is also relevant as it creates a right to “restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned . . . confiscated, taken, occupied, used . . . .”127 It is important to note the order of the injunctions imposed on state parties in both Articles. They first call for redress and restitution.128 Only in cases where redress and restitution are not possible does compensation become an option.129

The 2007 Declaration, in addition to supporting indigenous peoples in their legitimate and essential land claims, recognizes that the key to resolving historic conflicts relating to indigenous peoples often lies in the settlement of land rights and related issues.

III. The Arab Palestinian Conception of Collective Rights

Issues such as collective rights are of critical importance to Arab-Palestinians in Israel. Civil rights groups founded by and for Palestinians in Israel are leading the way in developing new paradigms of understanding regarding their status, which incorporate the discourse of both minority rights and indigenous rights.130 Significantly, over the last decade, a wide range of Arab-Palestinian academics, social activists, legal experts, and community leaders initiated a series of in-depth internal discussions on their current challenges and future status in Israel.131 Throughout this intensive

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1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

2007 Declaration, supra note 61, art. 28.
127. Id. art. 11(2).
128. See id. arts. 11(2), 28(1).
129. Id.
process, they exchanged their hopes and visions for the future, taking into account their history along with current legal and social arrangements. In this context, preferred models of interaction with and relationship to the state were examined. These discussions culminated in the formulation of four political documents outlining these thoughts and hopes released between December 2006 and May 2007. The documents include “The Future Vision of the Palestinian Arabs in Israel” (Future Vision), the “Equal Constitution for All” (Equal Constitution), the “Democratic Constitution,” and “The Haifa Declaration.” The framing of all four documents was substantially guided by universal legal standards in relation to minority rights and the protections granted therein.

The creation of these documents took place as the 2007 Declaration on the Rights of Indigenous Peoples was in its final stages of formulation. This timing demonstrates that the Arab-Palestinian community’s discourse reflected a parallel growing international interest in indigenous group rights. Furthermore, the 2007 Declaration assures Arab-Palestinians that the international community recognizes their rights and grants their experience legitimacy. By clearly embodying and reflecting the rights demanded by Arab-Palestinians in Israel, the Indigenous Peoples Declaration provides strong legal and moral support for the Arab-Palestinian community and strengthens its claims in the international arena.

The impetus for formulating these documents was the enduring and endemic discrimination, on an individual and collective level, against Arab-Palestinians in Israel.

132. Jamal, supra note 10; Aghbaria & Mustafa, supra note 131; Ghamen & Mustafa, supra note 130, at 52–53.
133. The documents anchor the internal Arab-Palestinian discourse to collective rights and their political and legal status in general in Israel. However, this does not negate achieving full legal protections and individual rights guaranteed under the basic principles of equal citizenship rights.
138. The 2007 Declaration was adopted by the U.N. General Assembly on September 13, 2007. See 2007 Declaration, supra note 61, at 1.
of Arab-Palestinian citizens living in Israel.\textsuperscript{139} The framers of these documents, which include communal leaders, intellectuals, academics, and politicians, not only seek equal treatment for Arab-Palestinians as individuals but also advocate for treatment of this substantial national minority in a way that reflects recognition of Arab-Palestinians as a native population, a distinct minority, and an indigenous group deserving of collective rights.\textsuperscript{140} Israeli legislation proves that there is already precedent for this, as it grants collective recognition to the Jewish majority.\textsuperscript{141} Building on this pre-existing system, and on international norms and legal standards in the realm of minority rights, the Arab-Palestinian community seeks to establish special, group-based rights in accordance with their own needs and visions, which will receive recognition in Israeli legislation.\textsuperscript{142}

The failure of the state to provide equal rights for Arab-Palestinian citizens has only reinforced the sense that collective group-based rights are a necessary precondition for true equality. Indeed, Arab-Palestinian citizens in Israel are of the firm belief that equal status will be achieved only once the state recognizes, practically and symbolically, the collective experience of the community in Israel and its distinct identity as both a national and indigenous minority.\textsuperscript{143} The Future Vision calls for equal participation, on the collective and individual levels, in all public resources and for decision making by consensus and power sharing. It defines such a situation as “the cornerstone of building an equal and just society.”\textsuperscript{144}

Indeed, the claim for granting comprehensive collective rights is based on the Arab-Palestinian community’s special historical, emotional, national, religious, and cultural relationship with its native land. This is not an immigrant population; Arab-Palestinians have lived on the land long prior to the founding of the Israeli state, and this “nativity” is critical to formulating the status and rights of the Arab-Palestinian minority in Israel, from both a moral and international legal perspective.\textsuperscript{145} Additionally, one must take into account that the Arab-Palestinian minority represents roughly one-

\textsuperscript{139.} See Ghanem & Mustafa, \textit{supra} note 130, at 53–54.
\textsuperscript{140.} See id.; Jamal, \textit{supra} note 10, at 15.
\textsuperscript{141.} Jabareen, \textit{supra} note 9, at 351.
\textsuperscript{142.} Ghanen & Mustafa, \textit{supra} note 130, at 55; Jabareen, \textit{supra} note 9, at 15; Jamal, \textit{supra} note 10, at 3–28.
\textsuperscript{144.} See id.
\textsuperscript{145.} See Jabareen, \textit{supra} note 27, 14–15; Jamal, \textit{supra} note 14.
fifth of the population of Israel, rendering it a “substantial minority” within Israel and thus strengthening its claim for the entitlement of collective rights.

The following Section will analyze identity rights, the right to political participation, the right to autonomy and self-determination, and historical rights through the lens of the above-mentioned Vision Documents.

A. Identity Rights

Group identity rights relate to linguistic rights because linguistic rights encompass cultural rights in the context of the Arab presence in Israel. While on the technical legal plane, Arabic is considered to be a national language alongside Hebrew, in practice it holds a lower status and is continually at risk of being downgraded. Furthermore, even though Arabic is formally an official language under law, many public services are inaccessible to Arabic speakers. Due to this profound gap between law and reality, both the Future Vision and the Equal Constitution refer to linguistic rights and frame them in the context of indigenousness. The legal chapter of the Future Vision, for example, calls for “guaranteeing [a] dual language system of both Arabic and Hebrew.” The document also has an entire chapter devoted to culture. Similarly, Article 17 of the Democratic Constitution relates to the bilingual state. The Democratic Constitution notes: “Hebrew and Arabic are the official languages of the State of Israel and enjoy equal status in all of the functions and activities of the legislative and executive branches[,]” and then continues on to specify how this would be implemented. Subsequently, Article 18 simi-

146. See Amara & Aghbaria, supra note 131.
149. FUTURE VISION, supra note 134, at 15.
150. Id. at 30–34.
151. The Democratic Constitution, supra note 136, art. 17.
152. Id.
153. Id.
larly relates to the multicultural state. Thus, these key documents call for bilingualism and an equal status for both the Hebrew and Arab languages, which would include improved teaching of Arabic in Arab schools and use of Arabic in signage nationally.

Importantly, a July 2010 report issued by the U.N. Human Rights Committee, which monitors the implementation of the ICCPR, criticized Israel on its unequal treatment of Hebrew and Arabic. The report found that “The State party should continue its efforts to make its public administration services fully accessible to all linguistic minorities and to ensure that full accessibility in all official languages, including Arabic, is provided. The State party should also consider translating cases of its Supreme Court into Arabic.”

B. Political Participation

While, as seen below, the Arab-Palestinian community seeks the ability to self-steer in various realms of life, it also calls for an ability to have meaningful participation in national forums. The community seeks both of these outcomes because Arab-Palestinians in Israel see themselves as part of the country and believe that group-based autonomy is no substitute for representation on the national level. Consistent with Article 5 of the 2007 Declaration, the legal section of the Future Vision calls for “effective representation and participation of the Palestinian Arab in decision-making procedures within the official institutes and the activation of the veto right in matters [influencing] their lives.” The 2007 Declaration also advocates for “appropriate representation on a collective basis in the state system.” Overall, these demands align with Articles 18 and 19 of the 2007 Declaration. Furthermore, the Future

154. Id. art. 18.
155. Future Vision, supra note 134, at 72; Equal Constitution, supra note 135, at 48; see also Amara & Aghbaria, supra note 131 (explaining how various Future Vision documents effect current political thoughts).
157. See id. § 23.
160. Id.
161. 2007 Declaration, supra note 61, art. 18 (“Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.”); art. 19 (“States shall consult and cooperate in good faith with the indigenous peoples concerned through
Vision demands full cooperation and coordination in decision making along with appropriate representation in determining policy. These demands remain consistent with the 1992 Declaration.

Representation of this nature is meant to guarantee equitable funding allocations and even affirmative action on the national level. Moreover, while the Equal Constitution advocates for provision of group-based or collective rights and protections, these are meant to complement, not replace, individual citizenship rights to which all citizens are entitled. The Future Vision includes an extensive discussion of economic and social issues along with an emphasis on social development. The Future Vision’s legal section discusses equality in the context of the need for equal distribution of all public resources. Indeed, the Arab-Palestinian rights discourse emphasizes that the status of the Arab-Palestinians should be on par with that of the Jewish majority in the legal, political, and social realms. The discourse specifically calls for equal sharing of the public domain to ensure the implementation of full political and social equality.

C. Right to Autonomy and Self-Determination

As noted above, the 2007 Declaration broke new ground in granting indigenous minorities autonomy, self-steering, and the right to manage their local and internal affairs independently. The need for and importance of self-steering is echoed by the Arab-Palestinian community in Israel and reflected in its writings as they particularly emphasize the need for self-steering in the realms of

their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.


163. See 1992 Declaration, supra note 62, art. 2(3) (“Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.”).

164. See EQUAL CONSTITUTION, supra note 135, at 79 (“Public resources belong to all citizens of the State, and therefore they should be allocated equally and fairly. True participation in public resources must apply to all the State’s resources, whether symbolic (flag, symbol, anthem), political (appropriate and effective representation in the decision-making centers) or economic (land and budgets.”).


166. These include, among others, budgetary, political, land, housing, and cultural resources. Id. at 15.


education, religion, and media. For example, the Future Vision states: “The state should recognize Arab-Palestinians in Israel as an indigenous national group (and as a minority according to international conventions) that has the right, as citizens, to choose its representatives directly and be responsible for their religious, educational and cultural affairs.” Such demands are supported by the 2007 Declaration. The 2007 Declaration’s Article 14 specifically mentions the importance of indigenous group self-steering in education. Similarly, the Future Vision devotes an entire chapter to this issue calling for “[t]he right of Palestinians in Israel (as indigenous people in their homeland) to self-administration of their educational system and for self-determination of its policy.” This highlights how Arab-Palestinians in Israel envision self-determination in the Israeli state context.

D. Historical Rights

One of the defining features of indigenous peoples, as opposed to other minorities such as immigrants, is their connection to a specific geographic area. Thus, land rights tend to be a major concern for such groups. Arab-Palestinians view their indigenousness through the lens of land and their historical relationship with, and attachment to, a specific geographic area. Furthermore, the community’s primary historical claims and calls for redress relate to dispossession of land.

171. See 2007 Declaration, supra note 61, arts. 3, 4, 5, 14, 20, 21, 23.
172. Id. art. 14.
173. Future Vision, supra note 134, at 28. The Arab-Palestinian community is taking active measures to realize this vision. Id. at 27–28; Ayman K. Aghbaria, Arab Civil Society and Education in Israel: The Arab Pedagogical Council as a Contentious Performance to Achieve National Recognition, Race Ethnicity & Educ. 1, 1–2 (2013). In June 2010, after several years of discussions and meetings among leading educators and activists, Arab-Palestinians in Israel established an Arab Pedagogical Council under the auspices of the National Committee of the Heads of Arab Local Authorities. See Aghbaria, supra, at 12–14. The Council aims to combat widespread inequalities in resource allocation and to spearhead the struggle to recognize the collective right of recognition of the Palestinian minority’s national and cultural narrative. See id. Furthermore, the Council aims to rectify a situation where Arab leadership is alienated from a meaningful role in national decision making and policy making. See id. The establishment of the Council (which, today, given its lack of resources, is primarily symbolic in nature) seeks to rectify the lack of appropriate representation in national bodies. See id.
176. See Equal Constitution, supra note 135, at 71 ("The principal value-based grounds on which the claim for granting comprehensive collective rights to the Arab-Pales-
The Arab-Palestinian community echoes both complaints on a historical plane and a more current focus on issues of housing, planning, and land acquisition. The Equal Constitution, particularly instructive on this point, states as follows:

Disinheriting the Arab residents of their land is an open wound for the Arab minority in Israel. Therefore, the state must formulate a move that will include official recognition of the Arab-Palestinian disaster of 1948, as well as an official historical apology in the name of all past governments for the injustice and discrimination. In this context, the state must respect the rights of some 25% of the Arab citizens that became internal refugees in their country after 1948 including their right to return to their original communities, as well as guarantee Arab citizens of the Negev ownership over their lands. Moreover, an appropriate deliberation of the historic rights of the Arab minority must also include the issue of the Palestinian refugees who were expelled from their ruined homes and villages and disinherit from their property—an issue that will be finally settled by a peace agreement or permanent arrangement between the two parties of the conflict.

Arab-Palestinians find themselves in situations similar to other indigenous peoples in the world. The issue of land continues to be a significant point of contention both for Arab-Palestinians living in Israel and for Arab-Palestinians living under Israeli occupation, particularly in the West Bank.

Past grievances and historical injustice are also discussed extensively within the current rights discourse in the Arab-Palestinian community. The Future Vision emphasizes this as it calls on officials to both acknowledge historical injustices perpetrated against the Arab-Palestinians and implement principles of restorative justice. Important and symbolic ways in which this can occur are in the areas of religious properties (the Islamic Waqf) and, most particularly, in relation to land confiscations. Lastly, the discourse within the Arab-Palestinian community emphasizes Palestinians’ bonds with the rest of the Palestinian and Arab nation. In this context, Article 36 of the 2007 Indigenous Peoples Declaration affirms the importance of maintaining such bonds and calls for the indigenous minority is founded in the fact that the Palestinian population is indigenous, and its special historic relationship with its native land—an emotional, national, religious and cultural relationship."

177. See id. at 77–78.
178. Id.
180. Id.
Arab-Palestinian Community in Israel: Collective Rights  475

nous people’s right to enjoy contact, relations, and cooperation with others of the same national group. 181

IV. PALESTINIANS AS INDIGENOUS IN INTERNATIONAL LAW

One of the basic and accepted tenants of the establishment of the indigenousness of any given group is self-identification and self-definition. 182 The writings of Jose Martinez-Cobo 183 and the International Labour Organization offer two primary definitions of indigenousness. 184 The inclusion of self-definition as an element of indigenousness is also echoed by the United Nations and mentioned in the 2007 Indigenous Peoples Declaration in Article 33(1). 185

181. See 2007 Declaration, supra note 61, art. 36 (“Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.”).

182. ANAYA, supra note 33, at 95–215.

183. Jose Martinez-Cobo states as follows: Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that have developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems. Jose Martinez-Cobo, Special Rapporteur to the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study of the Problem of Discrimination Against Indigenous Populations, U.N. Doc. E/CN.4/Sub.2/1986/7, ¶ 379 (1986); see also Daes, supra note 112, ¶ 9 (“[T]he concept of ‘indigenous’ is not capable of a precise, inclusive definition which can be applied in the same manner to all regions of the world.”).

184. Defined for the purposes of International Labour Organization (ILO) Convention 169 on Indigenous and Tribal Peoples, the ILO states as follows: This Convention applies to (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, spiritual, cultural and political characteristics and institutions. Convention Concerning Indigenous and Tribal Peoples in Independent Countries, Convention No. 169, art. 1.1. June 27, 1989. The Convention also adds that “[s]elf-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this convention apply.” Id. art. 1.2.

185. See 2007 Declaration, supra note 61, art. 33(1) (1) (“Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.”).
The Arab-Palestinian community in Israel defines itself as indigenous. Establishment of indigenousness is regarded as a central tenet for supporting the various positions expressed in the Future Vision documents. Each document espouses the basic premise that the Arab-Palestinian community in Israel is an indigenous minority. The Palestinian historical narrative and self-definition as an indigenous community are essential in substantiating any rights-based claims. Thus, the vast majority of direct references to indigenousness in the Future Vision documents focus on owning and affirming this indigenous status. This imbeds the discourse within the consciousness of the readers, which include both the Palestinian and Israeli general public along with international readers, as further detailed below.

The Future Vision, considered to be the leading and most comprehensive text of the four, integrates the idea of Arab-Palestinians as an indigenous people throughout the writing. Its first sentence states, “We are the Palestinian Arabs in Israel, the indigenous peoples, the residents of the States of Israel, and an integral part of the Palestinian people and the Arab and Muslim and human Nation.” The legal chapter of the Future Vision, in particular, builds on and strengthens this premise. The Future Vision also calls on the Israeli authorities to recognize the indigenousness of the Arab-Palestinian people. Thus, indigenousness is treated as a basic legal and social right deserving recognition and remains a necessary condition for action consistent with this recognition. After establishing the indigenousness of the Arab-Palestinian people, the content in the rest of the Future Vision flows from this premise.

The Equal Constitution for All also contains an extended discussion on indigenousness, which forms the basis for the legal sec-

188. See Future Vision, supra note 134, at 5.
189. See Jamal, supra note 11, at 1–2; Jabareen, supra note 9, at 391.
191. Id. at 12 (“Palestinian Arabs in Israel are indigenous people of the country and their historic and material relations with their homeland emotionally, nationally, religiously and culturally.”). This chapter was written by the author of this Article.
192. Id. at 15 (“An official recognition of the collective Palestinian-Arabs existence in the State, and their national, religious, cultural, and language character, and recognition that they are the indigenous people of the homeland.”).
194. This document is written by the author of this Article.
tion in the Future Vision. Similar to the other documents, the Equal Constitution calls on the Israeli authorities to recognize the indigenousness of Arab-Palestinians in Israel. This document conceptualizes indigenousness as a basic condition for the development of an inclusive constitution and as a lead-in to a discussion on collective rights for Arab-Palestinians. Accordingly, its first recommendation for action is the “official recognition of the Arab minority as a national minority and as an indigenous population.” The Equal Constitution closely grounds its arguments in international and domestic law.

The Haifa Declaration and the Democratic Constitution are similar in tone. The Haifa Declaration emphasizes the importance of history in establishing indigenousness while also grounding its claims in international law and covenants. The Haifa Declaration also makes recognition of the indigenousness of the Arab-Palestinian people a condition for reconciliation and constructive inter-group relations when it states the following:

We firmly believe that the fulfillment of all the conditions for a reconciliation between the two peoples, the Jewish Israeli and Arab Palestinian . . . requires the recognition of the right of the Palestinian people to self-determination, and the realization of the rights of the Palestinians in Israel as a homeland minority . . . .

The Democratic Constitution, for its part, also declares that “Arab citizens in the State of Israel are an indigenous minority.”

195. Id. at 19–22. (“The Arab Palestinian minority is an indigenous minority, with national, linguistic, cultural and religious characteristics distinguishing it from the majority group . . . .”).
196. Id. at 72.
197. Id. at 19–22.
198. Id.
199. For example, Haifa Declaration states the following:
As we are an indigenous minority whose people was driven out of their homeland, and who has suffered historical injustice, the principle of equality—the bedrock of democratic citizenship—must be based on justice and the righting of wrongs, and on the recognition of our narrative and our history in this homeland.

HAIFA DECLARATION, supra note at 137, at 14. Furthermore:
Reconciliation also requires recognizing the Right of Return and acting to implement it in accordance with United Nations Resolution 194, ending the Occupation and removing the settlements from all Arab territory occupied since 1967, recognizing the right of the Palestinian people to self-determination and to an independent and sovereign state, and recognizing the rights of Palestinian citizens in Israel, which derive from being an indigenous minority.

Id. at 15.
200. Id. at 17.
201. The Democratic Constitution states as follows:
Their [Arab-Palestinian’s] political status has been changed against their will, making them a minority in their homeland; since they have not relinquished
lishment of the indigenousness of the Arab-Palestinian community in Israel constitutes an essential basis in the community’s struggle for individual and ethno-national equality. 202 Indeed, securing equality of status with the dominant national group is central to ensuring rights for minorities and indigenous peoples worldwide. 203 Without equality at both the individual and group levels, the rights enumerated in the 2007 Indigenous Peoples Declaration are meaningless. In fact, Arab-Palestinians in Israel are becoming increasingly assertive in the international sphere and on the domestic front in voicing their demand for collective rights as an indigenous minority. 204 The international community has also been simultaneously advancing in its recognition of the rights of minorities in general and indigenous peoples in particular. 205 As noted, development of the Arab-Palestinian discourse on collective rights overlaps that of the international community. However, while on the international stage the Arab-Palestinian cause and their group rights are widely recognized, they are not recognized within Israel. 206

Importantly, following the vote on the Indigenous Peoples Declaration in September 2007, the national daily newspaper Haaretz carried a short feature on the issue. 207 According to the Haaretz journalist:

[The Declaration’s passage] means that Arab-Palestinians in Israel, along with other groups such as Native Americans and First Nations in North America are entitled to self-determination along with autonomy and the ability to manage their own local affairs. They are also entitled to the return of their lands and other resources that previously belonged to them but were subsequently confiscated (hundreds of villages were destroyed and millions of dunams of land were confiscated by the Israeli
authorities). In cases where return of lands is not possible, they are deserving of compensation and redress.208

The article indicates that the Israeli authorities did not perceive passage of the 2007 Declaration as a positive development. Indeed, return of land would be only one of many legitimate claims made by Arab-Palestinians should the state consider recognition and implementation of the Declaration’s provisions. The article continues to explain that the vote took place on a Jewish holiday preventing the Israeli delegation from casting its vote.209 However, attorney Adi Sheinman from the legal department of the Ministry of Foreign Affairs, as interviewed by the journalist, commented that the government shares the views of those who abstained from the vote or voted against it.210 While Sheinman did mention that the government would not have voted in favor, she did not specify if the country would have voted against it or abstained.211 The article concludes by saying: “As Attorney Sheinman said, it is just a ‘declaration’ free of any actual legal obligation.”212

While official responses to the Future Vision documents within Israel were characterized by hostility, the discourse of Arab-Palestinian citizens as an indigenous people is gradually making inroads into Israeli human rights discourse locally.213 A report by the Association for Civil Rights, the flagship organization of the social change movement in Israel, noted: “the Arabs in Israel constitute not only a minority, but an indigenous people.”214 The report continues by defining an indigenous minority, differentiating it from immigrant groups, and referencing the recognition of indigenous peoples and their accordant rights in international discourse.215 As the authors of this report indicate, current discourse in Israel is in contradiction to the very definition of indigienousness as defined by the 2007 Indigenous Peoples Declaration.216

208. Id.
209. See id.
210. See id.
211. See id.
212. Id.
214. Id.
215. See id.
216. See id.
CONCLUSION

Collective rights are enshrined in international human rights documents. Article 27 of the ICCPR, the 2007 Declaration, and the 1992 Declaration all lend important support to providing special rights and protections for minorities as a group and recognize the need by states to take active measures to safeguard those rights. While not binding, the 2007 Declaration on the Rights of Indigenous Peoples, in particular, broke new ground in securing group-based rights for indigenous communities and reflects a statement of best intentions on the part of the international community. Importantly, it supports the four key collective rights analyzed by this Article: preservation and development of the groups’ identity, political participation, the right to autonomy and self-definition, and historical rights.

The Arab-Palestinian community in Israel—a national and indigenous minority constituting some twenty percent of Israel’s citizens—has adopted this discourse of rights. This indigenous minority suffers from ongoing discrimination by successive Israeli governments, particularly in the area of collective rights. To this end, the community has developed its own set of demands with regard to its indigenous status, and while the State of Israel does not recognize them, the Arab-Palestinian community’s views reflect international discourse and are regarded as being essential for improving their situation on an individual and collective basis. The passage of the 2007 Indigenous Peoples Declaration, in particular, strengthens the Arab-Palestinian case in international law by giving the demands of the community the moral and legal legitimacy and support they require.