

# **Diversity in *Sulha* Practices among Arab-Palestinians in Israel and Its Implications for State–Minority Relations: A Pluri-Legal Perspective**

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**Abstract:** Based on semi-structured, in-depth interviews with Arab-Palestinian *sulha* mediators in the Galilee, the article explores different modes of dispute resolution employed for resolving matrimonial and familial disputes in this community. The “customary” *sulha* mechanism is shown to be highly heterogeneous in nature. Moreover, different modes of *sulha* making also manifest or embody different models of relations between the Israeli state and the Arab-Palestinian minority. These modes are presented and discussed in the article.

**Keywords:** *Sulha; Palestinians; Israel; Legal Pluralism; State-minority relations*

## **Introduction**

The treatment of customary/indigenous law by the legal-anthropological literature has evolved over the years. Early studies in the anthropology of law, characteristically conducted in colonial settings, have generally tended to view customary/indigenous laws as if they are ahistorical, pristine normative systems, manifesting the values and norms of the studied indigenous groups. Legal anthropologists have therefore invested most of their efforts in identifying or extracting the values and the “legal principles” out of case studies, aiming to produce a written manual of the studied (oral) indigenous law (see, e.g., Barton 1919; Hogbin 1938; Schapera 1938; Richardson 1940).

By the 1970s and 1980s, however, this line of research was challenged, as later generations of legal anthropologies—working, by then, in post-colonial settings—argued that their predecessors' studies have been flawed because they failed to notice the colonial influence on the “indigenous legal systems” that they were studying (Snyder 1981; Comaroff and Roberts 1986). The anthropology of law of the

1980s thus shifted its focus from the analysis of rules and norms, supposedly underlying “indigenous” laws, to the processual analysis of dispute resolution (e.g., Gulliver, 1972, 1979) and to the analysis of the socio-political processes that produced, during the colonial era, what came to be known as “indigenous laws” (see, e.g., Chanock 1985; Moore 1986). From this perspective, “customary/indigenous laws” were no longer seen as stable, internally developed bodies of law, but as dynamic legal systems, transformed and influenced by the colonial regime and by the new power structure that emerged in the colonies (Starr and Collier 1989, 12).

One of the results of this shift in perspective has been the emergence of legal pluralism as a key concept in post-1970s socio-legal research (Santos 1987, 297; Merry 1988). The new focus on the socio-political processes that enable the creation of a well-defined indigenous law, and on the interrelations and interdependence between different bodies of law opened new analytical horizons for legal-pluralists. Scholars of legal pluralism were able to expand their attention from the mere revelation of “more than one bodies of law, coexisting in a single social space,” to the complex interrelations that may evolve between such bodies of law (Woodman 1998).

Yet, despite this apparent analytical and theoretical elaboration of the concept of “indigenous/customary law,” one aspect of its conceptualization has so far remained unchanged: indigenous legal systems are still perceived as internally coherent and monolithic. This perception, in fact, stands in sharp contrast to the accepted wisdom concerning the state legal system, that has long been recognized as heterogeneous, polycentric and multivocal (Dworkin 1978, 1986).<sup>1</sup> Socio-legal scholars—and particularly, scholars of legal pluralism—may indeed recognize that certain historical processes and perhaps also certain power struggles have brought about the “indigenous law” that they study, but they continue to view it as if it constitutes one coherent whole. The ongoing debate about the ascertainment of “aboriginal customary law” taking place in many Western states, illustrates this conceptualization (see, e.g., Black 2010; Cornell 2006; Richardson, Imai McNeil 2009; Scholtz 2013).

In this paper I aim to challenge this underlying premises and to argue that non-statal, indigenous/customary mechanisms of dispute resolution may be just as

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<sup>1</sup> An entire field in socio-legal studies has been devoted to the study of polycentricity in state law. See, e.g., Petersen and Zahle 1995; Sinha 1996.

polycentric and multivocal as state law. This polycentricity, in turn, opens a wide range of possibilities for diverse patterns of interactions with state mechanisms and for diverse sets of consequences. This general argument will be exemplified by a close analysis of some case studies of matrimonial and familial dispute resolution among Arab-Palestinians in the Galilee. In all these cases, “traditional” communal mechanisms of dispute resolution called *sulha* were involved as well as state mechanisms.

The term ‘*sulha*’ (from *sulh*, peacemaking) denotes a process of dispute resolution, involving a third party that literally goes between the disputing parties, trying to bring about conciliation. As will be demonstrated below, the *sulha* mediators studied in this research employed a broad range of practices and tactics: sometimes they refuse to cooperate or even to recognize state mechanisms; sometimes they operate in coordination with state mechanisms; and sometime they are practically subordinated to the state's interests. As I will show, the practices and the ideological agendas of *sulha* mediators with regard to their interrelations with the Israeli state do not only influence their ability to resolve matrimonial disputes, but also transmit a powerful message about the “proper” relationship between the state and the Arab-Palestinian minority in Israel. The pluri-legal analysis of *sulha* processes thus sheds light on different models of interrelations between the Arab-Palestinian minority in Israel and the Jewish state.

The article is structured as follows. The next section will briefly review the situation of the Palestinian-Arab citizens of Israel, particularly the communities residing in the Galilee, in Northern Israel. The tense relations of this minority with the Israeli state will be discussed, and the *sulha*, as a “traditional” communal mechanism of dispute resolution will be introduced. Following a short methodological section, three case studies, all dealing with the practices of *sulha* mediators in their efforts to resolve matrimonial and familial disputes among Palestinians in the Galilee, will be presented. The article will conclude with a discussion section, analyzing the multivocality of the *sulha* mechanism not only with regard to dispute resolution, but also with regard to the pattern of “proper” relations with the State of Israel.

## **The Arab-Palestinian Minority in Israel and the *Sulha* Mechanism of Dispute Resolution**

The 1948 War—the “War of Independence,” in Israeli terminology; the “*Nakba*” (the Catastrophe), in Palestinian terminology—was undoubtedly a transformative event in the violent history of the Israeli–Palestinian conflict. In the aftermath of the war, the Israeli state was securely established, while the Palestinian people, who suffered a devastating defeat, were divided into three distinct groups with different trajectories:

- Palestinians who remained within the borders of the newly-established Jewish state, who later became citizens of that state (this group came to be known as “the Arabs of 1948”);
- Palestinians who remained within the perimeters of Mandate Palestine, *but* were outside the Israeli borders (i.e., in the West Bank, under Jordanian control, and in the Gaza Strip, under Egyptian control). These Palestinian fell under Israeli control following the 1967 War, but Israel refrained from granting them Israeli citizenship. They therefore constitute an occupied population until today.
- Palestinians who fled or were expelled outside the borders of Mandate Palestine.

The present research deals with the first group alone, i.e., with those Palestinians, who are Israeli citizens. The focus is on those residing in the Northern District of Israel (the Galilee) – an area with a large Arab-Palestinian population of about 750,000 people.<sup>2</sup> This population is characterized by religious and ethnic diversity as well as by diversified patterns of residence: it includes Muslims (73%), Druze (15%), and Christians (12%), who live in several dozen towns and villages – some are ethnically or religiously homogenous, but others are mixed.

The Arab-Palestinian citizens of Israel maintain a tense and complex relationship with the State of Israel. Israel is supposedly a democratic state, committed to civil rights and equality for all its citizens. Yet, as bluntly illustrated by the “Basic Law: Israel, the Nation State of the Jewish People,” passed by the Knesset in 2018, Israel is also an ethnic state, committed to promoting the interests of the Jewish people alone.<sup>3</sup> Non-Jewish citizens and especially Palestinian citizens of Israel thus find themselves in the status of “sub-tenants” or second-class citizens. In such

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<sup>2</sup> See Israel Central Bureau of Statistics (CBS). Statistical Abstract of Israel 2018, No.69. Population, by population group, religion, age and sex, district and sub-district. Available from: [https://www.cbs.gov.il/he/publications/doclib/2018/2.%20shnatonpopulation/st02\\_19x.pdf](https://www.cbs.gov.il/he/publications/doclib/2018/2.%20shnatonpopulation/st02_19x.pdf) (Retrieved 3 May 2019).

<sup>3</sup> See <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf> (retrieved 3 May 2019)

circumstances of apparent marginalization and discrimination against them, their sense of belonging and their identification with the State of Israel is highly problematic.<sup>4</sup>

Within this context of inherent tension, the field of law and order becomes especially charged with distrust, prejudice and discrimination. Indeed, recent years have seen a heated debate concerning police over-enforcement and under-enforcement in Arab towns and villages (Hasisi and Weitzer 2007; Perry and Jonathan-Zamir 2014); about discrimination against Arabs in Israeli criminal courts (Rattner and Fishman 1998; Gazal-Ayal and Sulitzeano-Kenan 2010); and about the over-representation of Arabs in Israeli prisons' population (Korn 2003). It should come as no surprise, therefore, that many Arab-Palestinian citizens of Israel—when finding themselves entangled in matrimonial or familial disputes—prefer to resort to communal, rather than to state mechanisms of dispute resolution (Rattner 1994; Pasquetti 2013, 2015).

This brings us to the mechanism of the *sulha* – a “traditional” process of dispute resolution in Arab societies that appear to be flourishing in present-day Israel (Shahar 2018). The *sulha* has been studied in a relatively systematic manner: several researchers have published comprehensive monographs on the topic (Kressel 1982; Ginat 1987; Jabbour 1993, 2010; Abu Nimer 2001; Lang 2005; Pely 2016; Saxon 2017; Shahar 2018), and a significant number of articles, dealing with it from different perspectives and employing diverse methodological tools, have been published in various academic venues (e.g., Abu Nimer 1996, 2000; Lang 2000; Kressel 2002; Tsafrir 2006; Fares, Milhem and Khalidi 2006; Shapira 2006; Pely 2008, 2010, 2011; Kritz 2013).

Yet, by and large, these studies have approached the subject from a very different perspective than the one adopted in the present study. First, research into *sulha* practices has tended to focus, almost exclusively, on the resolution of high-profile blood-feud disputes, while disregarding other, less dramatic ones, such as matrimonial disputes. Second, research into the *sulha* mechanism has tended to focus on the ritualistic aspect of the process: the nomination of a delegation of conciliators (*jaha*); the signing of a temporary truce between the disputants (*hudna*); the ritualistic

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<sup>4</sup> There is a rich academic literature trying to depict the complex attitudes of the Palestinian citizens of Israel toward the state. See e.g., Smooha 1984; Rouhana 1989, 1993; Ghanem 2000, 2001; Rabinowitz and Abu Baker 2005.

shuttle diplomacy employed by the *jaha* in order to achieve permanent conciliation; and the celebration of the achieved *sulha* by a complex set of rites (the tying of the knots on the *rayah* flag, the traditional conciliation meal, etc.).<sup>5</sup> The emphasis on the ritualistic aspect of the *sulha* usually comes with a “cultural perspective,” i.e., a perspective that treats the *sulha* as a manifestation of cultural and social principles, characteristics of Arab/Muslim societies (see, e.g., Abu Nimer 2001; Pely 2016, 24-26). In other words, most research into the *sulha* has tended to view it as a closed, ahistorical, almost essentialist, “traditional” mechanism of dispute resolution, which remained unchanged from time immemorial.<sup>6</sup>

By contrast, the present research focuses on family disputes, and not on blood-feuds. Almost by definition, such “mundane” and less dramatic disputes are less ritualistic in nature – usually there is no nomination of a formal delegation of notables, and the resolution of the dispute is not celebrated in a public ceremony. Instead, in matrimonial disputes, a single mediator (or sometimes more than one) intervene informally, trying to bring about conciliation or a resolution. The present study does not focus on the ritualistic aspect of the matrimonial *sulhas* (which is less developed, in any case), but on the practices and the agency of the mediators. In addition, the underlying assumption is that the *sulha* mechanism is *not* an unchanging “traditional” process that takes place in a “cultural bubble,” but rather a socio-legal process, through and through entrenched in socio-legal and political contexts. Moreover, the present article embraces a pluri-legal perspective, which emphasizes the interconnections between *sulha* mechanisms and state mechanism (the police, the social services, the state attorney's office and the courts). In my view, the communal *sulha* mechanisms and the state mechanisms do not only operate parallel to each other, but also influence and shape one another; indeed, they constitute one another.

In light of these emphases, the present article does not strive to contribute so much to the understanding the *sulha* process per se, but rather to the understanding of the complex interrelations evolving between the *sulha* mechanism and state mechanisms of dispute resolution, as well as between the Palestinian-Arab minority in Israel and the state. Another contribution may be to the legal-pluralist literature, as the multicentricity of the *sulha* mechanism is revealed.

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<sup>5</sup> For a detailed description of the *sulha* process, see Pely 2016.

<sup>6</sup> Elias Jabbour, for example, writes that *sulha* is a traditional apparatus that was familiar to the Arabs even before the days of the Prophet (Jabbour 1996, 8). See also Ginat 1987: 15-18; Kressel 1996: 7.

## **The Multivocality of *Sulha* Intermediaries: Three Case Studies**

As stated above, at the basis of this study lies the assumption that conflict resolution among the Arab minority in Israel is not taking place in a closed normative bubble, but rather in a pluri-legal reality, in which the state penetrates into the semi-autonomous field of the minority group (Moore 1978). Interventions by state mechanisms therefore shape and influence *sulha* processes continuously, just as *sulha* processes influence the operation of state mechanisms.

In order to understand the interconnections between the communal and the state mechanisms of dispute resolution, my study focuses on the practices and the mode of operation of the *sulha* mediators, particularly in cases of matrimonial disputes. In-depth semi-structured interviews were conducted with 27 individuals (25 men and two women), who may be defined as intermediaries, each in his/her own way involved in attempts to settle disputes in Arab society in the Galilee. I was given the details of 12 of the interviewees by a brother of one of my students, who is employed in the Welfare Department in one of the Arab towns in the Galilee. Then, using the Snowball Method,<sup>7</sup> I obtained the names and contact details of other interviewees, trying to reach persons with different profiles than those I had already interviewed. Indeed, the interviewees come from a wide variety of backgrounds: a few were professional *sulha* mediators (i.e., persons who invest most of their time in formal dispute resolution), but others were civil servants or retired civil servants such as, policemen, a retired judge, social workers or political figures; others were professionals such as lawyers, businessmen and a therapist; five of the interviewees were Imams and religious Islamic figures, and one was a Christian priest. The semi-structured interviews were conducted in Arabic or Hebrew (usually a combination of both), and lasted from one hour to four. They were recorded, if possible, and fully transcribed, and then analyzed using the ATLAS.ti software. This method enabled me to systematically analyze recurrence of themes and topics.

The three sub-sections below present excerpts from interviews with three interviewees. Since this article focuses on the heterogeneity of *sulha* practices and on different modes of interrelations between the *sulha* mechanism and state mechanisms, an explicit stance with regard to the latter issue constitutes the selection criteria. In

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<sup>7</sup> On the methodological advantages and risks in this method, see, Biernacki and Waldorf 1981.

other words, the three *sulha* mediators presented and discussed below are among those mediators who articulated in their interviews a clear-cut agenda with regard to interrelations with the state.<sup>8</sup>

### ***Case 1: The Ex-Political Prisoner***

This interviewee is a man in his mid-sixties, short, with a trimmed beard and soft-spoken. He lives in one of the Arab cities in the Galilee. Despite his modest appearance, there is something in his personality that transmits un-hidden strength. The man has a fascinating life story: he completed a BA degree in Psychology at the Hebrew University of Jerusalem in the early 1980s, however, when the first Lebanon War broke out in 1982, he felt, as he says, that he had to fight with his people. He flew to Europe and from there to Lebanon, where he joined the ranks of the PLO fighters in the Palestinian refugee camps. He was captured by the IDF, tried and sentenced to 12 years in an Israeli prison. In prison, he became the leader of the political prisoners, but a few years later, in 1985, he was released in the prisoners-exchange deal, known as the “Jibril Agreement,”<sup>9</sup> and deported from Israel. He arrived in Spain, where he earned a doctorate in medicine and specialized in psychiatry.

In 2001 he was allowed to return to Israel and to his birthplace town, where he still lives to date. He is the head of a new political movement that bears the banner of resistance to Israel, and also of the Association of Palestinian Released Prisoners. Alongside his political activity, he earns his living by providing psychological treatment mainly to Jewish Israelis of South American origin, who like to be treated by him because he speaks Spanish. The interview, which lasted almost three hours was held at his home. Most of the conversation took place in Hebrew, although in some parts we switched to Arabic. The interview was fully recorded, and later transcribed by my research assistant.

When asked how he began to act as *sulha* mediator, the interviewee replied, “I started my career as a mediator in prison.” As the leader of the political prisoners in the Israeli prison, he used to reconcile fellow inmates—both political and criminal prisoners—who quarreled. A few weeks after returning to Israel in 2001, it turned out

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<sup>8</sup> For a more elaborate and comprehensive picture of the diverse *sulha* practices in the present-day Galilee, see Shahar 2018. An extended English version of the book is currently in preparation.

<sup>9</sup> About the Jibril prisoner-exchange agreement, see Yeini 2018.

that his brother had borrowed money “from bad people,” as he said, who began threatening him. He intervened and managed to resolve the conflict between them, employing connections that he had made during his time in prison. Since that first successful *sulha* mediation, he earned a reputation as a just and capable mediator.

Being an ex-political prisoner and an outspoken advocate of Palestinian resistance, the interviewee presents a very clear-cut ideology with regard to state institutions. He described, for example, the following case:

There was a case, in one of the villages, when there were suddenly gun shots at a car driven by a local girl. The police were investigating the case, but the girl's family also asked us to intervene. First of all, we took the girl and her family out of the village. We moved them away for a month, and in the meantime we tried to find out what had happened. We made some investigations and finally we found out what happened: This girl's sister was working in a local supermarket. Working with her was a guy from another family, who was interested in her. He made a pass on her, but she rejected him, and he felt humiliated. He then went and shot at the car of her sister. We found out what happened and managed to achieve a *sulha* between the families.

*So you and the police investigated the incident at the same time, and you managed solve the matter. Did you notify the police what happened?*

No. The police did not solve the case, and the *sulha* that we achieved between the families was based on the agreement that there will be no complaint to the police. The police should not be involved.

*Do you think that the police cannot deal with such problems? Or maybe it is simply not interested or not willing to invest the efforts to solve such problems?*

The police have no tools. The problem is that Arab society is still a society of extended families (*hamoulas*). Israeli law tries to break up the Arab community. The [Israeli] law is a Western law, that works according to different criteria. It is a law that does not fit to Mizrahi Jews, either. Maybe it suits the Ashkenazim who came from Europe, but not the Mizrahim or the Arabs. As a result, a child can throw his father into prison, if he complains to the police. They will come and arrest the father. This breaks up families. If the son complains or the wife complains and sends a man to jail, how do you

expect him to react? How can they continue to be a family? Today the father has no authority, no control.

*So you think that the state is interested in breaking up Arab society?*

I don't know if that's the intention. This is not directed against the Arabs, it is a cultural matter. We are not in Europe, not in Poland. The law is not accommodated to our mentality.

As indicated by this case, the interviewee clearly perceives his *sulha*-mediation activities as an integral element of his political stance: He strives to present a communal, Arab-Palestinian alternative to the state, and the *sulha* practices fit in well with this ideology. When asked to settle a dispute, he only agrees to intervene if the parties commit not to involve the police. Elsewhere in the interview he said:

We have usually nothing to do with the police. If you think we're going to the police to ask for help – it's not like that. There are mediators who have contacts with the police, but we don't. I do not trust the police, and I don't agree to intervene if it is involved. There is no trust in the police, that it will get to the truth.

The interviewee does not trust the Israeli police, but moreover, he believes that state law is inappropriate for Arab society (as well as for Jews of oriental origin). As a result, in his view, the law enforcement system causes damage to Arab society, breaking up families and weakening the Arab-Palestinian community in Israel. He therefore strives to present an alternative; to replace dependency on the state apparatus with independency and autonomy. The political movement that he heads carries this agenda openly, but his mediation practices convey a very similar message, not less effectively. Whenever he manages to settle a dispute without involving the police and the courts, it proves the ability of the Palestinian-Arab community in Israel not only to create its own social norms, but also to enforce them.<sup>10</sup>

### ***Case 2: The Committed Lawyer***

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<sup>10</sup> This is, in fact, the criteria, according to Sally Falk Moore, for determining the existence of a "semi-autonomous social field" (Moore 1978).

This interviewee is a woman of about forty-five, a lawyer by profession. Her appearance is clearly secular: she wears a T-shirt and jeans, and her hair is visible and loose. The interview was held in her office, which is located just above the local Shari'a court, at the center of a large Arab city. It was conducted in Hebrew, with Arabic phrases interspersed here and there. It was recorded, and later transcribed.

In contrast to male interviewees, who generally did not mention their marital status during the interview, this interviewee elaborated on her personal biography. She said she was an excellent student in high-school, but for various reasons decided to marry at an early age and leave school. At the age of seventeen she married a man ten years older than her, and soon bore two children. Three years later, however, she was already divorced. According to her, it was very difficult – in the early 1990s it was highly unusual for a woman to seek divorce, and she was the first woman in her extended family who ever did so.

She felt, nevertheless, empowered. Leaving her children in the custody of their father, she went back to school, only to drop out again a few months later, after her father's sudden death. After she recovered from the grief, she decided to take the kids back into her custody. Following a long struggle and many hardships, she won custody over her kids. She became very interested in the field of law, and especially family law. She completed successfully her matriculation exams, went to law school, and became a lawyer – she managed to fulfill her dream.

During her interview, she repeated, again and again, her strong conviction that working as a family lawyer is more than earning a living:

I do not forget for a moment that family law is highly political, and solving problems between spouses or within the family has implications not only for the disputing parties and their families, but also for society at large. The day I get a case and don't feel butterflies in my stomach, is the day I'm going to close my office. One must not forget that it's not a file or a number, it's people, it's life, it's the fate of children.

She presents her personal experience—the struggle for divorce and the struggle over child custody—as the sources for her determination to prevent others from unnecessary suffering:

I use my personal experience and the professional knowledge that I have acquired to help others go through crises in a way that reduces damage. I want them to suffer less from the system. I want to minimize damage not only to the family but also to society, to our community. Children who are victims of a divorce struggle between parents, will grow up in the future to be disturbed adults. These are the criminals of tomorrow. Today they are children of parents who slander each other and fight without limits in courts, and tomorrow one of them would break into my house, or be a drug dealer. I am very concerned about the direction of society today – the neglect, the indifference, the crime. That's why I am in this area, because I want to reduce damages.

*So this is a kind of Tikkun Olam<sup>11</sup> for you?*

[Laughing] Tikkun Olam is a big word. I want to make a small difference for the children, for families and for society. That's all, to minimize damage.

*How does this attitude of yours manifest itself? How do you minimize damage?*

I do not rush to file claims. I do not throw people into the system providing them with tools to fight each other, until they are destroying one another. If I do this, the system runs them over. Let's say a client enters my office. First, I want to hear what brought her or him to me. I'm trying to understand thoroughly what's the story – what are their problems and why do they want to divorce.

I have a lot of experience, so usually I quickly identify the focal points, and then I find out if there is a chance to reconcile them [...]. I ask the client: "Where do you want to go? You want her to raise the children alone"? If I see that there is potential for mediation, I am in no hurry to submit the claim. From my experience, once you start a legal process, the conflict escalates. Sometimes, one sentence, poorly phrased, that was inserted to a statement of claim or to a statement of counter-claim, may escalate the conflict.<sup>12</sup> The other party will become enraged and vindictive. The client does not understand that it was drafted by a lawyer, simply because these are the rules of the game. He

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<sup>11</sup> 'Tikkun Olam' is a Jewish Halachic term meaning an act of kindness performed to perfect or repair the world.

<sup>12</sup> In fact, this observation is perfectly in line with findings of many socio-legal scholars who argued that "going out to court" - i.e., moving the dispute from the private realm to the public, legal one – often brings about an escalation in the conflict. See, e.g., Merry 1979: 898.

says to himself: “Ahhh, that's what you are saying about me? that's how it is? Okay, so I do that ...”.

The interviewee notes that although it pays off, financially, to submit as many claims as possible—“everything the client wants, and more”—she will not be able to live with herself if she acted in this manner. “Money will always come. In the present-day situation, there is no lack of work nor lack of livelihood, so if I see that there is a chance to save the family, to save the children, I happily give up some extra money.”

As illustrated by these quotes, it seems that from the interviewee's perspective, the Israeli legal system causes damage to families, and she takes it upon herself—almost as a mission—to save people from the courts and reduce damage. The interesting thing is that this position is expressed by someone who is part and parcel of this system, someone whose livelihood is based on her work within the legal system, who represents customers in various courts, and who holds a senior position in the Israel Bar Association.

According to the interviewee, the vast majority of the mediation cases in which she is involved, stem from encounters with potential clients. People, men or women, enter her office, asking for consultation, or for legal representation in one case or another. She listens to them, trying to figure out what really brings them to her and what they really want to achieve:

If there is room for a *sulha*, I am always in favor. But this is not always the case. Sometimes a man comes, sitting opposite me, telling me that he caught his wife cheating on him. What can I tell him? “Forgive her, she will not do it again?” I have nothing to tell him. But if he says, “She cannot cook,” I say, “I did not know to cook either, I learned.” If he tells me, “She does not clean the windows,” I say “Come look at my windows at home.” As someone who was divorced for trivial reasons, I do not want other people to go through this process unnecessarily.

She provides an example of mediation attempts that she made when a potential client came to her office and asked to file a divorce claim:

Someone came to me. An older man; his wife is also old. Their kids are grownups; they already have grandchildren who are not babies. “I want a divorce,” he said, “I cannot live with her any longer.” So I asked what happened – “You are not young, you have grandchildren, now you're getting a divorce?” He says to me: “If I do not take her to court, she will not let me be. She speaks to me badly; she has not shown me any respect for many years; she tells me this and that...”.

I said, “Okay, what do you want?”; “I want to get divorced.” So I told him, “Listen, you are like my father. It is the easiest thing for me to file a claim in court that will end your marriage and will bring a divorce. But let's give it a chance. Let's try to see if you can settle with her. Let's hear what does she want”. He tells me, “No, she's like that and like this,” insisting he wants me to file a claim. He just wants to show her that he can repudiate her.

So, I drafted a statement of claim, and we went to court. The first meeting, she too came, started talking about little things: how he behaved like this or like that; how he takes it for granted that she cooks and cleans for him; little things. The qadi sees that I'm not fully sure what we're doing there, and he knows me – he knows that if I believe in something, I fight for it like a lioness. If I believed a divorce was necessary, I would fight to get him a divorce. So the qadi says to me: “How about you take them to your office, drink some coffee, see if something may be done?”

#### *The wife was represented?*

No, she was not. I said to the qadi, “Gladly, your Honor, we'll go and talk, and we'll be back when we're done.” I brought them up my office, we drank a cup of coffee, and I said, “You heard what she said in court on how you treat her?” He said, “I did not notice that I was behaving like this.” I told them, “At your age, instead of spending time with your grandchildren, you want to fight for divorce, and for such small things? It's a shame.” I felt embarrassed scolding them, giving them advices. Both are much older than I am. In the end I told them, “We will not withdraw the file from the court schedule, but give it a chance. Go back together to your village,” because they came separately. “If you need to do some shopping, go together. There's a place for sweets nearby, go and buy some for your grandchildren. Try to fix what went wrong. You heard what bothered him, and you heard what bothered her, it's one, two,

three. Okay. Try to fix this. Give it a chance. It's not much effort, just little things. If it does not work, we'll meet again whenever you want." There were no further meetings – after a while the man called me and asked me to cancel the claim.

As illustrated by these short excerpts from the interview, this interviewee, unlike the ex-political prisoner discussed above, does not seem to be outspokenly political in her approach. She does not negate the Israeli legal system, on the contrary, she makes her living out of representing clients in Israeli courts. Indeed, she takes a critical stance toward this system, but her criticism does not relate to discrimination against Arabs, nor to the supposedly unaccommodating Israeli law, but toward the impersonality of the judicial system, its over crowdedness and assembly-line form. She therefore seeks to prevent those who may not need to, from entering the courts' gates. Sometimes, as she admits, there is no avail, and a couple really needs to get a divorce; in such cases, she herself, as a skilled expert in legal discourse and in legal proceedings, does her work faithfully. But in those cases, where it is not necessary to divorce, she goes out of her way to keep her clients away from the legal system.

In her mediation practices, the interviewee thus seems to bypass the formal court system. At the same time, however, she also bypasses the "traditional" *sulha* processes – she herself liaises between the parties, and no other mediating agents are involved. In a way, she seems to be carving out a private, unique path, of her own, betwixt and between the court system and the *sulha* tradition.

This liminal position of hers is also manifested in the mode of relations she promotes between the state and the Arab-Palestinian minority in Israel. According to her applied model, it is possible—and necessary—for the Arab-Palestinian minority to integrate into the state apparatus. Yet, the meaning of successful integration is not a loss of identity and community cohesion; rather, it means learning to use the state apparatus for the community's benefits and to avoid it when it is unbeneficial.

### ***Case 3: The Professional Sulha Man***

This interviewee is a Bedouin sheikh living in one of the Bedouin villages in the Galilee. He is in his 60s, an army veteran, who has served for nearly thirty years in the IDF. The interview, that lasted more than three hours, took place in his home and was conducted in a combination of Arabic and Hebrew. It was recorded, except when the

interviewee was about to talk about matters that he perceived as sensitive and asked for the recorder to be turned off. Recording was later resumed with his permission. The interview was later fully transcribed by my research assistant, who was also present at the interview.

Unlike the two previous interviewees, this one meets the description of a professional *sulha* mediator: A person who is a member of a formal *sulha* committee and spends all his time trying to mediate in conflicts. Such *sulha* mediators typically inherit their positions from a father or a grandfather (and sometimes from an older brother or an uncle), who were reputable mediators. In this case, the interviewee inherited his position from both his grandfather and father: the first was a famous sheikh of one of the Bedouin tribes in the Galilee during the Mandate period and served as a reputable tribal arbitrator; his elderly father is also a known *sulha* mediator, and a member of the National *Sulha* Committee.<sup>13</sup> According to the interviewee, he accompanied his father in countless mediation cases and learned from him the secrets of his trade. The father is still there, but because of his advanced age, he greatly reduced his involvement in *sulha* processes. His son, the interviewee, aspires to succeed him as a senior *sulha* mediator. In response to the question of how much time he invests in mediation efforts, he replied:

Lots of hours. I do not measure time; I just spend as much time as necessary. I also do not get paid, I never get paid for mediation. That's what I'm doing now. I learned to be a mediator from my father and my grandfather. But today I took charge. Thank God, I am well-known in my village, well-known in the district, well-known by the police. In my area and in my tribe, I handle every problem – small or large. Outside of the tribe, I only deal with cases of murder.

As we will see, it is no coincidence that the interviewee emphasized not only that he is well-known in his village and in his district, but also by the police. In

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<sup>13</sup> Among the Palestinian-Arab population in Israel there is a hierarchy of *sulha* committees: there are local committees, regional committees, and a National Committee (see Pely, 2016, 90-92). The National *Sulha* Committee is the most important and reputable and usually deals with the most complicated conflicts (which are hence distinctly high-profile cases). It includes 15 senior mediators, all distinguished elders, representing different communities and regions in Israel. The elderly father of the interviewee is the Bedouin representative of the Galilee in this committee.

response to a question about his connections with the police, he described the following case:

There was a case of a couple in our village. They quarreled. The woman filed a complaint about violence, and the husband was arrested, but later he was released. A few weeks later, there was violence again. A mess. Well, we gave the husband a restraining order [forbidding him from entering the nuptial house and from being near his wife - IS]. One day I get a phone call from his father, "Come quickly," he said, "he went to the house, and there is a mess." So I go there. There are three police cars at the house, sirens howling, policemen with their guns drawn. Don't ask. However, I know them, and they know me. I said to the officer: "I'm going to talk with him." I went in, started talking to the husband, reassuring him. After he calmed down, I also called her father to come in. After no more than one hour we reached an agreement – they will divorce, the little boy will remain with his mother, and the older ones will be with their father. The officer told me: "You succeeded where no one else could," but that's because I know all of them [both, the disputants and the police – IS]. They know me, and they know who I am, so they listen to me.

He also described another example of his close cooperation with the police:

Sometimes there is an unjust side, but the other side [the just one - IS] is weak. It's clear to me and it is clear to them. So if I see that the strong side does not compromise even though he is not right, I turn to the police. Sometimes there is no choice – the police must be involved [...]. I'll give you an example: there was a conflict between two families. Beatings, stones, riots. They begged us to intervene. However, both sides refused to compromise and make peace. I told them: "This is a state with a rule of law, not a jungle. If there is violence, we will go to the police." I saw that they continue to be obstinate, so I called the chief of the police-station. I told him: "Stop this and that for 24 hours." The police arrested the heads of the two families, and while they were in custody, I was allowed talk with them.

*And it worked?*

It worked. They had to be shaken a bit, so that they would agree to see things sensibly. If you have a wise police-station chief, you can get help from him. Sometimes it's good – he complements me, and I complement him.

The interviewee, in effect, describes a kind of synergy between the police and the *sulha* mediator: they work together to settle conflicts and restore order. Insofar as the parties show stubbornness and refuse to accept the mediator's pleas, he activates the police and takes advantage of the pressure that it exerts on the parties. In return, he provides services to the police:

Since the events of October 2000,<sup>14</sup> there has been more cooperation with the police. They show the *sulha* delegation (the *jaha*) a lot of respect, and that helps. It's a good thing. They know that the *sulha* delegation can force the parties to end the conflict, so they cooperate with us. I save them a lot of manpower and a lot of trouble, solving problems that they cannot solve. Let me give you an example:

A house was demolished in our village. All the village was in uproar – the high-school students left the schools, the mosques' megaphones began to call everyone to go outside. There was a big mess. The police command was at the intersection near the village, and the district police commander began summoning all the council members. I told him: "If you don't want casualties, do not enter the village!" I lost my voice that day, from shouting, trying to calm down the youngsters. There were young people who get their pleasure from provoking the police – throwing stones, advancing and running backward. There were thousands of policemen, cavalry, demonstration police vehicles, all of them preparing to enter the village.

I told the district commander: "Are you crazy? this is a village with many soldiers serving in the army; everyone has weapons. If you enter the village there will be casualties." In the end they told me: "Take action." I assembled them [i.e., the protesting youngsters - IS] and reassured them. I told them that the police would not enter the village. We began collecting donations—not

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<sup>14</sup> In October 2000, 13 Arab-Palestinian citizens were killed by Israeli police during demonstrations in support of the al-Aqsa Intifada that started in the occupied territories. See Bishara 2001.

only from our village, but from all the villages in the area—and within 24 hours, the demolished house was rebuilt [...]. In the end, the police gave up, the house was rebuilt, and a permit was issued.

These excerpts from the interview clearly illustrate the close cooperation that exists between the interviewee as a *sulha* mediator and the state apparatus, especially the police. The interviewee emphasizes the police's interest in cooperating with him: "I save them a lot of men-power and a lot of trouble, solving problems that they cannot solve," but he downplays the benefits that he himself draws from having intimate connections with the police.

This close cooperation between the communal *sulha* mechanism and the police has far-reaching consequences, at two levels: at the level of resolving conflicts within the Arab society in Israel, and at the level of the interrelations between the Arab minority and the state apparatus. At the former, as we have seen, the synergy between the mediator and the police enables the exertion of effective pressure on the disputing parties leading to a successful resolution of conflicts. Such successes surely strengthen the status and the reputation of the mediator as well, who benefits from having such connections with the police.

On the second level, this mutually beneficial cooperation proves to be helpful in acquiescing the Arab minority in Israel. At this level, however, the implications of this pattern go even further: it can be argued that this kind of cooperation between *sulha* mediators and the police contributes to the perpetuation of the marginal position of the Arab-Palestinian minority in Israel. While helping to resolve small and local problems, such cooperation also reduces the acute need to deal with the problems of this minority in a structural and systematic manner. Moreover, this pattern also has negative implications for the rule of law and the mode of governance in Israel, since it enables, as we have seen, the circumvention of courts' decisions and their lack of enforcement.

## **Discussion and Conclusion**

The excerpts from the three interviews presented above, to my mind, illustrate the richness and diversity of the field of conflict resolution among the Palestinian-Arab minority in Israel. In contrast to the common view of customary/indigenous legal systems as homogenous and monolithic in nature, the present research has shown not

only that there are different types of *sulha* mediators, but also different patterns of interrelations between the communal mechanism of dispute resolution (the *sulha*) and the state mechanisms.

The short case studies presented have illustrated that the state—with its various mechanisms—is almost always present, in one way or another, in processes of conflicts resolution among the Arab-Palestinian community. At times, this is a real and tangible presence, whereas on other occasions it is a potential intervention or a threat to intervene; sometimes the intervention is perceived as authoritarian and domineering, and on other occasions, it is seen as enabling and even empowering.<sup>15</sup>

My point is that the three mediators whose stories were presented above—and in fact, all 27 mediators that were interviewed as part of this broader research—must find ways to accommodate to the presence of the state and its mechanisms and to the ensuing interaction between the state mechanisms and the communal mechanisms of dispute resolution. None of them operates as a mediator in a communal bubble, just as none of them operates in a formal-statal space, devoid of informal, communal mechanisms.

As indicated by the three case studies, the patterns of interactions between the communal and state mechanisms may be very different from one another. In a somewhat simplistic manner, we may identify three patterns or three models of interaction that emerge from the interviews:

### *The Autonomy Model*

This model is exemplified by the first interviewee, the ex-political prisoner. This man, who embodies in his entire persona the Palestinian resistance to Israel, conducts *sulha* mediation with the explicit intent to provide a communal alternative to the Israeli mechanisms. Not only does he refuse to cooperate or even maintain contacts with the Israeli legal system, he also refrains from informing the authorities that a case has been solved. The strong message conveyed by his mediation practices is therefore a message of autonomy and independence: We, the Palestinian citizens of Israel may not be able to transform our situation and to make the State of Israel disappear, but we can certainly resist as much as possible its attempts to intervene with our lives and to shape our culture, our society and our identity.

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<sup>15</sup> For more examples, see Shahar 2018.

### *The Integration Model*

This model is exemplified by the second interviewee, who is a successful lawyer. Being a divorcee herself and having abundant experience with the courts, she came to the realization that it is better for some of her clients—those that may come to terms with each other, in her view—to stay out of courts. In such cases, she embraces the mediator position and invests great efforts in reaching reconciliation. Her model for the beneficial interrelation between the courts and the *sulha* mechanism is therefore a model of partial or selective integration: The Arab-Palestinian minority in Israel may and should integrate into the state and may and should use the tools provided by the state when they are beneficial. Yet, in situations where the state mechanisms are not beneficial and may even become detrimental, Arab-Palestinian couples should not resort to the courts and should keep away from the legal system. Those couples will be better off if they remain within the boundaries of their community. The model of selective integration that this interviewee promotes is therefore based on a division of labor and complementing relations between state courts and communal mechanisms.

### *The Cooptation Model*

This model is embodied in the practices and rhetoric of the Bedouin sheikh (the third interviewee). This man, who is a professional *sulha* mediator, operates in coordination and cooperation with the police. When discussing the *sulha* mechanism, his point of departure is that it is an essential tool, particularly for the state, because it helps to maintain order and prevents violent clashes between the police and the Arab minority. In this framework, the *sulha* mechanism is therefore coopted and even subordinated to state interests: it practically becomes a control mechanism employed by the state to ensure the continuous acquiescence of the Arab-Palestinian minority in Israel.

From a broader perspective, we may say that the three models presented here constitute three points of reference, running along a continuum. At one pole we find a model of relations based on resistance and negation of the Israeli state mechanisms; at the other pole, we find a model of relations based on cooptation and subordination to the state; and at the middle we find a model of selective integration, based on partial integration into the state apparatus.

Thus, as illustrated by this article, the pluri-legal analysis of *sulha* practices and *sulha* practitioners may serve as a prism for deconstructing the attitudes of Palestinian citizens of Israel toward the state. Notably, these models are not theoretical or abstract in nature; rather, they are practical models, embodied, in a way, in the practices of the *sulha* mediators. As such, they may be more meaningful than attempts to formulate abstract visions of relations between the Arab-Palestinian minority and the Jewish state that have become popular in recent years.<sup>16</sup>

It is hard to estimate the popularity and the reception of these models by the Arab population in Israel, but the fact that there is a demand for the services of these three mediators clearly indicate that certain elements within the Arab-Palestinian public do find them appealing. We may conclude, therefore, that in their unique *sulha* practices, the three interviewees discussed here—as well as those that were not dealt with in this article—do more than solve conflicts among Arab-Palestinian disputants; they also promote, exemplify and embody different models of relations between this minority community and the Jewish state.

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<sup>16</sup> See, e.g., <http://reut-institute.org/Publication.aspx?PublicationId=1977>; [http://www.acpr.org.il/nativ/articles/2008\\_3\\_mismachim.pdf](http://www.acpr.org.il/nativ/articles/2008_3_mismachim.pdf) (retrieved 7 May 2019).

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