

"Constitution by Consensus," Including, Certainly, the Consensus of the Arab Minority in Israel

Response to the article "Constitution by Consensus: By Whose Consensus?"
By Professor Nadim Rouhana

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An article written by Professor Nadim Rouhana was published in Adalah's Newsletter, November 2004, under the title of "Constitution by Consensus: By Whose Consensus?" In his article, Professor Rouhana discusses several subjects related to the issue of "Constitution by Consensus," mainly regarding the determination of Israel's status as "Jewish and democratic."

Professor Rouhana presents a clear ideological, solid, unequivocal and, apparently, uncompromising position regarding the determination of Israel's status as "Jewish and democratic." While serious and deep ideological debate – in which Nadim Rouhana usually takes part – is appreciated, acceptable and even encouraged, it is not acceptable to disseminate incorrect, misleading and unreliable information, regardless of whether it is done intentionally or by mistake, and on this issue I wish to respond.

Professor Rouhana argues that the process of "Constitution by Consensus," which is led by the Israel Democracy Institute, means "Jewish Consensus" and that the Arabs have been rendered completely absent from the debate on the constitution and from the efforts to gain its approval. This information is incorrect. For over four years, the Israel Democracy Institute has been leading open dialogue with representatives of the different groups within Israeli society, in order to offer a formula for a constitution which will be based on compromises and will be approved by a broad consensus. The dialogue has been conducted through the discussions of the "Public Council of Constitution by Consensus," headed by the former Supreme Court President, Justice Meir Shamgar, and through several discussions with the representatives of different groups in Israeli society.

Many Israeli Arab representatives have taken an active and important part in the dialogue led by the Israel Democracy Institute that is part of the "Constitution by Consensus" process. Among the tens of Arab participants who took part in the process, there have been Arab Members of Knesset, representing all Arab parties, including the party with which Professor Rouhana identifies; heads of local councils; intellectuals; legal scholars and Arab academics; Qadis (judges in the Shari'a courts); Sheikhs and other religious representatives; heads of associations; authors; journalists and other public figures.

In these discussions, the Arab representatives presented, to the best of their abilities, their views and positions both regarding constitutional issues that affect all of society, and, in particular, regarding the needs, desires and rights of the Israeli Arabs, as individuals and as a national indigenous collective. As a result, in the constitution proposed by Justice Meir Shamgar and the Israel Democracy Institute, Israel is defined as "Jewish and democratic" and includes arrangements and rights that give significant and important expression to the needs, desires and rights of the Israeli Arabs. If, indeed, the Knesset formulates a constitution similar to this proposal, then its significance will be historic and important achievements for the Arab citizens of Israel would be made, including the following:

- Equality for all citizens as a fundamental principle of the State. This principle appears in the chapter of "Fundamental Principles of the State" and in the "Declaration of Rights" and it is

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expressed at various times and in different manners, both through the rights to equality and through the prohibition of discrimination.

- The State of Israel will recognize, for the first time, the Arab minority as a national minority.
- Israel will ensure the status and independence of all religions within the state.
- The state will guarantee the preservation and development of the historical and cultural heritage of the country and its residents, certainly including that of the Arabs in Israel.
- Recognition will be given, for the first time, to the collective rights of a national ethnic, religious, cultural or linguistic minority, to preserve and develop its culture, religion, language and heritage.
- The cancellation of section 7A of the Basic Law: The Knesset, which prevents a party from running in the Knesset elections if it does not accept the state of Israel as Jewish and democratic.

As stated above, the proposed constitution of Justice Shamgar and the Israel Democracy Institute is based on a compromise made by all groups within Israeli society and on social, democratic, sector-based and state achievements, which are also very important. In his article, Professor Rouhana presents data from a survey undertaken by Mada al-Carmel – The Arab Center for Applied Social Research, which points out that, "67% [of Israeli Arab survey respondents] agree to a state which guarantees the highest degree of rights, while remaining a Jewish state." This data is similar to the survey findings conducted by the Yafa Research Institute of Nazareth for the Israel Democracy Institute. Nonetheless, in the survey conducted by the Institute, over 77% support a constitution which defines Israel as a Jewish and democratic state that guarantees full equality for the Arabs.

As we have mentioned, Professor Rouhana was mistaken and misleading; there has been wide participation of Arabs in the process of "Constitution by Consensus." The Arab representatives were not a "fig leaf," as Professor Rouhana argues, but friends who managed to influence the process whilst conveying the desires and clear interests of the majority of the Arab community in Israel. In this regard, they represented faithfully and with recognizable success the majority of the Arab community in Israel.

It is true that there is an insignificant minority, a minority with abilities and resources, which will not accept the state of Israel as Jewish and democratic even if it guarantees full equality for Arabs. This extreme position will have neither the power to change the definition of Israel as "Jewish and democratic," nor the power to achieve full equality. On the contrary, this position will justify the attitude of the Jewish majority towards the Arab minority as presenting a threat to the very existence of the state, and it will encourage the Jewish majority to continue with the policies of discrimination and deprivation. This position will cause the relationships between Jews and Arabs to become more radical and severe, and it might even lead to a situation in which an increasing number of Jews justify and support the despicable and illegitimate positions of transfer, the exchange of territories heavily populated by Arabs (Taibeh, Baqa al-Garbiyah, Umm al-Fahem and other areas) and the denial of the rights of Arabs in Israel. This position is contrary and opposite to the interests and desires of the majority of the Arab community in Israel.

It is hard for me to believe that Professor Rouhana needed disinformation in order to strengthen his arguments and convince readers. Maybe he forgot, maybe he did not know. The truth is that tens of Arab representatives participated in the process of "Constitution by Consensus," which was led by the Israel Democracy Institute. They were not fig leaves, but friends with personal and persuasive abilities, patriots of equality who are loyal to the interests of Israeli Arabs.