

Dr. Nahda Shehada  
Korttenaerkade 12  
2518 AX  
The Hague,,  
The Netherlands  
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Kate Ormsby  
Tribunal Review Counsellor  
Tel: 01274 514071  
Email: kate.ormsby@iasuk.org  
First Floor, City Exchange, 61 Hall Ings, Bradford, BD1 5SG  
Telephone 0844 887 0111 Fax 0844 887 0222

**Subject:** Report on the case of Ayesha and Fakhri Eid  
Ref.: BFO/772934/KO

Summary of Nahda Shehada's expertise:

*I work as Senior Lecturer at the Institute of social Studies in the Hague/The Netherlands. I teach Gender, Culture and Development. Currently, I am coordinating a three-year research project entitled 'Islamic Family Law in Palestine: Text and Context' in cooperation with Zurich and Bern Universities/Switzerland. Between 2005 and 2006, I was a researcher at (ISIM) in Leiden and is associate researcher at Birzeit university/Palestine and chercheure associée at the Laboratoire d'anthropologie urbaine (CNRS, Ivry-sur-Seine, France). Among my recent publications are Justice without Drama (2005), 'Le paradoxe du mariage precoce a Gaza' (2005), 'Women's Experience in the Shari'a Court of Gaza City' (2005), 'Religious Mediators in Palestine' (2006), 'Equity vs. Predictability in Islamic Law' (2008, co-authored with E. Conte), 'House of Obedience: Social Norms, Individual Agency and Historical Contingency' (2009), and 'Flexibility vs. Rigidity in the Practice of Islamic Family Law' (2010).*

*My first book 'Justice without Drama' is an ethnographic study that examines the interplay of codified Islamic family law, uncodified social norms and the multiple references of the Islamic judges in the Sharia courts of Gaza. I spent 14 months of fieldwork, observing the litigation process, studying archives and cases, and communicating with the judges, litigants and lawyers about the operation of Islamic family law at present and in the past.*

*Arabic is my mother tongue. I read, write, and speak English fluently. I therefore translated all my fieldwork material (including marriage and divorce certificates). I also have kept many such certificates with me for further reference.*

## **The Report**

1. I start by accepting the fact that the IDs of both the sponsor and the Appellant are fully legal and acceptable. They both correspond to the well-known figure and shape of Palestinian IDs that are produced by the Palestinian authority and screened and approved the Israeli authority.

Proof: Both IDs are written in Arabic and Hebrew. The form, format, sequence and order of the IDs correspond to the Palestinian IDs known in the West Bank and the Gaza Strip. Both IDs have the stamp of the Palestinian authority.

One important proof is that ALL Palestinian IDs that are produced after the creation of the Palestinian Authority start with Number 4. This is applied on those who came from abroad with Yasser Arafat and those who were born after September 1993, the date of the creation of the Palestinian Authority. The ID numbers of the two children who were born in 1995 and 2001 correspond to this fact.

*(I attach my own ID for consideration and comparison)*

2. I believe that if we start by examining the IDs of both Mr. and Mrs. Eid, many of the ambiguous issues become clearer. The IDs are the most important documents for the Palestinians because they cannot do anything without them and cannot move about (within and without the Palestinian territories) without carrying their IDs. Palestinian IDs are considered the most trusted documents because they are supervised and monitored by the best security apparatus in the world: Israel. No Palestinian ID is produced without full administration, screening and approval by the Israeli authorities.

Before 1993, i.e. before the signing of the Oslo agreement between the Palestinian Liberation organisation and Israel, it was Israel that had the full authority of producing the Palestinian IDs. After the creation of the Palestinian Authority (PA), the Oslo agreement gave permission to the PA to produce the IDs under the condition that *all* IDs should be screened and approved by Israel. This is due to the fact that Israel is still the occupying power and Palestine is not a state yet. There is another reason for this monitoring and examination; Palestinians cannot cross the borders without getting the Israeli permission on the basis of the information written on their IDs. The IDs are the most important Israeli tool to monitor the Palestinian population of the West Bank and Gaza.

3. If we accept the fact that the IDs of both Mr. and Mrs. Eid are legal and legitimate, then examining the names of the children helps understand the marital status of the couple.

The child Majed Eid was born in 2001 and was registered in his mother and father's IDs. This means that in 2001, the couple was married. This was one of the missing links in the bundle of documents sent to me. To get information in this regard, I made a phone call to Mr. Eid on 21 May 2011, and asked him about this specific issue. He

said that he remarried his wife in 1999 and lived with her before his travel to the USA. I asked about a written proof of his remarriage, he said that according to Islamic law, one can bring a shayke to his house and ask him to remarry his divorced wife and everything will be fine.

Now, how can we evaluate this statement? Knowledge about the cultural and religious practice of Gazan is useful in this regard. I wrote my first book about the Sharia courts in Gaza in 2005 on which basis I got my PhD degree. I spent 14 months in doing fieldwork which provides me with enough knowledge about the cultural, legal and social practices in Gaza. I therefore, with a satisfied conscious approve Mr. Eid statement. Muslims in Gaza care about religious and community legitimacy more than legal legitimacy. Put it differently, the boundary between the legal and religious, especially in issues related to marriage and divorce is very blurred. Yes, one needs e.g. to register his marriage in the court, but that is secondary to his religious marriage in the eyes of the community. The power and authority of the people's norms and religion is far greater than the power of law.

Accordingly, my reading of the case of Mr. Eid is that he,

- A) Got a legal marriage with his wife Mrs. Eid on 1986.
- B) He divorced her in the Sharia court in 1996.
- C) The couple remarried again before having their fourth child in 2001 but did not register their marriage in the court.

4. The question now is: how come that they were divorced in 1996 but have their child registered in their IDs in 2001?

My analysis goes to the following direction. The couple, although got divorced in 1996, but their new marital status was not passed to the Civil Registration Authorities (which should change their marital status and passed the new information to Israel). Therefore, when they remarried again in 1999 (through a religious marriage), and got their new baby in 2001, they did not find any problem in registering the baby on their IDs.

I consider this analysis sound and valid because in Gaza, the communication between different authorities is not as sophisticated as one would presume. In other words, the divorce of 1996 had not been communicated to the Civil Registration Authorities, therefore the marital status of Mr. and Mrs. Eid on their IDs remained unchanged.

5. The marriage certificate of 2006: question of validity!

As Mr. Eid has written in his statement, he was required to provide the Hamas authorities with a document that proves his lawful relation with his wife. In this regard, I reemphasize the fact inviting a shayke to one's home to conclude the marriage is not abnormal; on the contrary, this is the norm in Gaza and in many other places in the Arab world. Inviting a Shyke to conclude the marriage is a 1) cultural practice for people to show their social and economic status 2) an opportunity to display publically that the couple is becoming husband and wife. I need to highlight the fact that a formal and fully active legal system in Palestine does not exist due to the simple fact that Palestine is not yet a state. Therefore, abiding by the social norms and religious practices of the community is the people's way to get approval and legitimacy.

6. on the reasons for Mr. Eid to get a new marriage contract in 2006

I am from Gaza and I know that many people suffered under the rule of Hamas. Being from the opposing party (Fatah) may cause a lot of troubles, including imprisonment, torture and in many cases disappearance. I assume that Mr. Eid, who, according to his statement, was a member of Fatah, had taken all the required precautions to avoid any confrontation with Hamas. One of those measures is getting a proof of his lawful marital status.

If we accept the fact that he had an Islamically accepted marriage relation with his wife (on which bases his son was born in 2001 and registered under his name), but does not have a proof, he needed to re-marry his wife in order not to get into trouble with Hamas.

It is important to know that Hamas was accusing Fatah of causing moral chaos in Gaza. After taking over, one of Hamas' stated missions was that it will rebuild the moral society in which no couple is allowed to walk in the street without being lawfully married. It is obvious that in this situation, Fatah members were targeted as the morally corrupted people. In this framework, one can fully understand the step taken by Mr. Eid.

7. Based on the above analysis, I consider that Mr. Eid has provided the British authorities with the 'available' proofs of his lawful relation with his wife.

Nahda Shehada