

One Gunman, Many to Blame

**Israel's culture of racism prior to the Shefa'amr
massacre and the role of the Attorney General**

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The Arab Association for Human Rights (HRA) was founded in 1988 by a group of lawyers and community activists to promote and protect the civil and political, economic, social and cultural rights of the Palestinian Arab minority in Israel from an international human-rights perspective. In 2003, the HRA expanded its activities to include a human-rights monitoring program, whose methodology relies on field research and interviews and legal analysis of the domestic and international human-rights standards. The idea of establishing a Research and Reporting program was first developed by the HRA in the wake of the events of October 2000, when 13 Palestinian Arabs (twelve citizens of Israel and one from the Occupied Palestinian Territories) were killed by state police forces. Since that time, a steady trickle of serious and often physical human-rights abuses against minority citizens means that the need for human-rights documentation and reporting of these abuses is more vital than ever.

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Introduction

On August 4, 2005, Eden Nathan-Zadeh, a newly-observant Jew who was serving in the IDF and lived in the settlement of Tapuach in the West Bank, murdered four Palestinian Arab citizens of Israel¹ and injured twelve others in a cold-blooded attack. Nathan-Zadeh boarded an Egged bus from Haifa to Shefa'amr, and as it entered the city of Shefa'amr he opened fire on the passengers in an act of premeditated homicide (this event is hereinafter referred to as “the terror attack.”)

Prime Minister Ariel Sharon described the soldier (who will be referred to hereinafter as “the terrorist”) as “a bloodthirsty terrorist who sought to injure innocent Israeli citizens.” Testimonies collected by the Arab Association for Human Rights (HRA) from eye-witnesses to the terror attack indeed describe a despicable act of cold-blooded murder based solely on the desire to kill Arabs.

Government ministers, Members of Knesset and the Israeli media have argued that the terrorist sought to prevent the IDF withdrawal from the Gaza Strip (the Disengagement Plan) by murdering Arabs, and that this was the reason for the attack. The HRA believes that this observation, although correct, provides only a partial explanation for the terror attack. The terrorist was a settler from the Occupied Territories, and his decision to launch his attack against Palestinian citizens of Israel was no coincidence, but reflected a widespread belief among the Jewish majority that the Palestinian minority poses a security and demographic threat to the State of Israel. This perspective, which is deeply ingrained among the Jewish majority, formed the backdrop against which the terror attack was committed. The fact that the terrorist was a soldier in the IDF merely made it easier for him to carry out the attack and realize his intentions.

The HRA believes that an examination of the behavior and attitudes of the Jewish majority toward the Palestinian minority since the establishment of Israel, and particularly since the events of October 2000,² leads to the

¹ The Palestinian Arab citizens of Israel will be referred to hereinafter as “**the Palestinian citizens**” or “**the Palestinian minority**.”

² At the beginning of October 2000, many Palestinian Arab citizens of Israel took to the streets in demonstrations and protests against the provocative visit by then opposition leader Mr. Ariel Sharon to the Al-Aqsa Mosque compound on September 28, 2000. During the visit, and in the following days, a large number of Palestinian demonstrators from Jerusalem and the

conclusion that the terror attack did not take place in a vacuum, but was preceded by a long and ongoing process of overt racist incitement against this minority, both by the state and official authorities and by the Jewish majority. This incitement was reflected in diverse ways: Racist statements by Jewish public figures; the enactment of racist laws; demands for the Palestinian minority to be expelled from Israel or subjected to transfer; calls for Jewish communities to be cleansed from the presence of Arabs, and so on. These phenomena combined to create an overall atmosphere of racism that legitimized physical attacks on members of the minority, and the most extreme manifestation of this atmosphere was the cold-blooded murder of innocent citizens by a terrorist.

This report will show that the terror attack was a natural consequence of the policy of racist incitement directed against the Palestinian minority, and of the attempts to delegitimize this population. International human rights law and domestic Israeli criminal law both provide tools for combating racism. However, the attorney general, who heads the prosecution service and is responsible for the application of criminal law, has declined to exercise his authority to combat the widespread racism in Israeli society against the Palestinian minority. In adopting this position, the HRA believes that the attorney general has failed to meet his legal obligation, has contravened international and Israeli law, and has indirectly contributed to the tragic consequences.

This report is published some six weeks after the terror attack, and one week before the fifth anniversary of the events of October 2000, emphasizing that the HRA sees a direct line connecting these events. While the terror attack certainly stands out as a distinct and murderous incident, it cannot be divorced from the events of October 2000 and the changes that have occurred in the attitudes of the Jewish majority toward the Palestinian minority during the years that have followed. The attack constitutes one link in an ongoing chain of verbal and physical violence directed by the majority at the minority.

One week before the publication of this report, the Police Investigation Department (PID) of the Ministry of Justice published its report on the responsibility of police personnel for the killing of 12 Palestinian citizens and one resident of the Occupied Territories during the events of October 2000.³ According to the report, the PID has decided to close all the investigative files

Occupied Territories were injured and killed as the Israeli security forces used extreme violence to suppress the demonstrations. The demonstrations and protests by Palestinian Arabs in Israel lasted for several days. In its efforts to suppress the protests, the Israel Police fired rubber bullets and snipers even used live ammunition. As a result of the police actions, 13 demonstrators were killed, 12 of whom were Palestinian citizens and one of whom was a resident of the Occupied Territories.

³ Ministry of Justice, Police Investigation Department, *Conclusions regarding the Clashes between the Security Forces and Israeli Citizens in October 2000* (September 2005) (in Hebrew).

opened due to the behavior of police personnel during these events. The HRA believes that this decision, which is based on conclusions that are diametrically opposed to those reached by the Or Commission on this matter,⁴ confirms one of the conclusions of this report: that the State of Israel, through its various authorities, supports racist behavior and attitudes toward the Palestinian minority by the Jewish majority and thus legitimizes physical attacks.

Chapter Two of this report offers a brief review of the meaning of the term “racism” as this has developed over the years. Chapter Three discusses the tools provided by international human rights law in combating racism. Chapter Four reviews the development of criminal law in Israel on this subject and the tools provided for combating racism. Chapter Five discusses the different manifestations of racism against the Palestinian minority in recent years in various fields. Chapter Six examines the policy of the Attorney General and his reaction to racist statements against the Palestinian minority made by Jewish public figures in recent years. Chapter Seven summarizes the conclusions derived from the previous chapters. Appendix A provides a detailed description of the terror attack, including the testimonies of eye-witnesses. Appendix B describes examples of cases in which Palestinian citizens have been attacked by Jewish citizens. Appendix C provides the text of the Israeli criminal code relating to the struggle against racism.

⁴ The official commission appointed on November 8, 2000 to investigate the events of October 2000. The Or Commission submitted its recommendations in September 2003.

What Is Racism?

The classic definition of racism is an anthropological and biological theory that sees humankind as divided into distinct races – on the one hand, the “superior” races, which have refined biological characteristics and should properly control the world; and, on the other, the “inferior” races, which do not possess these refined characteristics and should properly be controlled.

Infamous examples of racism include Nazi racial theory, which led the Nazis to attempt to eliminate peoples they defined as “inferior vermin;” the treatment of Black (Afro-American) citizens of the United States prior to the 1960s (legally-sanctioned racial discrimination); and the Apartheid system in South Africa in the twentieth century.

Although racism as an anthropological and biological theory emerged primarily during the nineteenth century, it reflects an approach that has existed since the earliest times. From the eighteenth century through the early twentieth century, as Europeans took control of large portions of Africa and Asia, they justified their rule by claiming that it was the duty of the superior White race to “civilize” the dark-skinned natives of these areas. Although colonialism has virtually been eradicated since the mid-twentieth century, its impact continues to be felt to this day.⁵

Today, however, a broader definition of the concept of racism has become current. This definition does not emphasize the sense of superiority on purely racial grounds, but rather the extrapolations of this sense toward other groups – national, linguistic, religious, and so on. While in the past this term was used to refer to superiority in an anthropological, biological and racial sense, it is now used to refer to the superiority of members of one group over those belonging to different groups within the population. As used today, racism refers not only to theories of biological differences between humans, but also to ideas relating to differences between people who belong to different social and cultural groups. In accordance with this definition, racism is present when the argument is made that there is a difference between the members of group A

⁵ Talia Einhorn, *Restriction of a Faction due to a Racist Manifesto in Accordance with Article 7A of the Basic Law; The Knesset*, (The Israel Association for the Problems of Parliamentarism, Jerusalem, 5754-1993), pp. 38-39 (in Hebrew).

and those of group B; and that, due to this difference, the members of group B are to be treated differently from the members of group A.⁶

Thus the term “racism” has been interpreted as extending to areas that have no direct connection with race *per se*, and thus grossly contradicts the social needs of a modern democracy.

This broad definition was also adopted in the 1996 International Convention on the Elimination of All Forms of Racial Discrimination, the most important convention relating to the struggle against racism. Article 1 of the convention states:

"In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

The same is true of Israeli law. Article 144A of the Penal Code, 5737-1977, defines “racism” as follows:

"Racism – persecution, humiliation, degradation, manifestation of hatred, hostility or violence, or the harming of a public or of sections of the population, on account of color or affiliation to a race or to a national-ethnic origin".

The Israeli Supreme Court has also addressed the term “racism” from a broad perspective. In CA 2831/95, *Alba v State of Israel*, *Piskei Din* 50(5) 221, Justice Eliahu Matza writes (on pp. 256-257):

"Indeed, in determining the scope of the term “racism,” far be it for us to adhere to technical, scientific or pseudo-scientific definitions regarding the different origins of the human species. “Racism” is no longer merely adherence to the infamous theory of racialism. “Racism” is any pointless hatred of the stranger by virtue of his being a stranger, on the basis of racial or national-ethnic distinction. This hatred is a social ill that is as old as time".

Accordingly, both international and Israeli law adopt the modern, broad and liberal definition of the concept of “racism,” enabling a more comprehensive and effective struggle against different manifestations of racism.

⁶ Ibid., pp. 42-43.

Racism *per se* is a grave violation of universal human rights, denying basic rights to certain individuals or groups solely on the basis of their color, race, ethnic or national origin, and hence grossly violating the principle of equality and the principle of human dignity – the most fundamental and central principles of human rights and of the Universal Declaration of Human Rights of 1948. Due to this grave violation of human rights, as well as the catastrophic results of racism as suffered by humankind, racism is the only political doctrine that has been outlawed by international human rights law.

Racism as Addressed in International Law

International human rights law⁷ establishes an obligation on the part of the state to protect the basic human rights and liberties of individuals within its area of jurisdiction in the civil, political, economic, social and cultural spheres.⁸ Similarly, international law imposes an obligation on the state to combat all forms of racism. Among other measures, the state is obliged to provide effective protection against the manifestation of racism within society.⁹

International law recognizes the need in modern times to protect religious, ethnic or national minorities. This protection includes, among other aspects, protection against violence or incitement against a minority, or against individuals belonging to that minority due to this status. However, international law is still struggling to solve the constant tension between recognizing and defending the basic rights of freedom of expression and freedom of association, on the one hand, while protecting the rights of groups or minorities, or of individuals belonging to these groups and minorities, not to be exposed to hostility, intolerance, defamation, libel and incitement to hatred, on the other hand. There is concern that providing protection for groups or minorities against incitement to hatred or racism may impair the freedom of expression and association, two basic rights that have been recognized as central to the totality of human rights. Despite this concern, however, international law views these two rights as relative in nature, which may be impaired to a degree in order to protect other, no less important rights, such as the right of individuals and groups not to be exposed to racist statements or incitement.¹⁰ The approach is that the state must protect its citizens, both as individuals and as groups, against violence and infringement of their dignity and reputation. The state is not entitled to shirk its obligation to protect the dignity of every individual.

⁷ For the sake of brevity, the term “international law” will be used to refer to international human rights law.

⁸ S. Fredman, *Discrimination and Human Rights – The Case of Racism* (2001), p. 122.

⁹ Amnesty International, *Racism and Administration of Justice* (2001), p. 5.

¹⁰ Fredman, Note 8 above, pp. 160-161.

Incitement to hatred and intolerance, and the need to impair freedom of expression and association in order to protect individuals or groups, are mentioned several times in international law. The International Covenant on Civil and Political Rights contains several relevant provisions. Article 19 authorizes limitations on freedom of expression to protect the right and reputation of “others”; Article 20 prohibits advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Article 10(2) and 11(2) of the European Convention on Human Rights restrict freedom of expression, assembly and association when necessary in a democratic society in the interests of the “prevention of disorder” and ‘protection of the reputation or rights of others.’ The American Convention on Human Rights refers to everyone’s right to have “his honor respected and his dignity recognized”; to liability to ensure the “reputation of others”; and to penalizing “advocacy of national, racial or religious hatred that constitute incitement to lawless violence or any other similar illegal action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin.” The UN Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief calls upon States to take “all appropriate measures to combat intolerance on the grounds of religion or other beliefs.” The 1978 UNESCO Declaration on Race and Racial Prejudice urges the “mass media and all organized groups within national communities” to refrain from presenting “a stereotyped, partial, unilateral or tendentious picture of individuals and of various human groups” (Article 5(3)). According to Article 6, States should take steps “to prohibit and eradicate racism [and] racist propaganda,” and should “combat racial prejudice.” The Charter of Paris for a New Europe, adopted on 21 November 1990 at the Paris Summit of the Conference on Security and Co-operation in Europe, states the determination of the 34 participating States from Europe, the United States and Canada “to combat all forms of racial and ethnic hatred, anti-Semitism, xenophobia, and discrimination against anyone, as well as persecution on religious and ideological grounds.”

However, the principal tool in international law for the struggle against racism is the 1966 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The State of Israel signed this convention on March 7, 1966, deposited its letter of ratification on January 3, 1979, and the law became effective as of February 2, 1979. To date, 170 nations have signed the convention.

The convention is based on the principles established in the 1948 Universal Declaration of Human Rights, and the signatory states undertook to prohibit through penal legislation racism in all its manifestations, both verbal and physical. While the convention addresses racial discrimination rather than racism *per se*, it condemns theories of racial superiority and refers explicitly to incitement to hatred and racism. The background to the drafting and signing of the convention was colonialism and the Apartheid regime in South Africa, as

well as the separation between blacks and whites in the USA and in European colonies in Africa, which was based on claims of racial superiority.¹¹

The convention does not include a definition of the term “racism,” but it does offer a definition of the term “racial discrimination”.¹² This definition relates to the broad perception of the concept of racism: a sense of superiority to, and negation of, racial, national, ethnic, linguistic and similar groups.

Article 2 of the convention addresses the undertakings of the member states to adopt a policy of eliminating racial discrimination of all forms. Among other obligations, the states are required to examine government policies, both on the national and local levels, and to amend or annul any law or regulation liable to create or perpetuate racial discrimination (Article 2(C)).

Article 4 of the convention is one of the most important sections, addressing the prohibition against incitement to hatred, hostility and racism against individuals and groups, and including the demand for signatory states to enact explicit criminal legislation prohibiting, through penal means, racist actions and incitement in their territory. A number of countries have indeed enacted laws in the spirit of this article. Article 4 states:

"States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;**
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and**

¹¹ Fredman, Note 8 above, p. 150.

¹² See the definition in Chapter Two above

shall recognize participation in such organizations or activities as an offence punishable by law;

- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination".**

The wording of Article 4 was a compromise between countries that wanted to criminalize not only racial discrimination, but also acts and statements of incitement to racial superiority, hatred and racism, and those who did not wish to impair freedom of expression and association. Some countries, such as the United States, feared that this article might contradict the doctrine of freedom of expression, which had secured a strong and primary position in its legal system. Despite these concerns, the article criminalized racist acts and statements, in keeping with the position reflected in Article 29 of the Universal Declaration of Human Rights (1948) and Articles 19 and 21 in the International Convention on Civil and Political Rights (1966) that freedom of expression and freedom of association are not absolute rights, but are relative and subject to various restrictions. Accordingly, the spirit of Article 4 is that the right of expression and freedom of association should not be given precedence over the right to a reputation and the right not to be exposed to discrimination or racist incitement.¹³

The Committee for the Elimination of Racial Discrimination considered Article 4 to be binding.¹⁴ Accordingly, member states whose laws were incompatible with the spirit and provisions of the article were required to amend their laws accordingly, and they did not enjoy discretion in this matter. A state that failed to act accordingly would be reneging on its undertakings in accordance with the convention, and would therefore be in violation of international law.¹⁵ In this respect, general provisions in the states' constitutions regarding the right to dignity and reputation, or legislation imposing civil liability (such as anti-defamation laws) are not sufficient. Legislation must be introduced that explicitly criminalizes such acts and statements.

Article 4 is considered the most explicit provision in international law designed to combat not only racial discrimination, but also racist incitement, propaganda and association, and all these entail.

Article 14 grants each member state the option of announcing that the Committee for the Elimination of Racial Discrimination is able to receive and examine complaints from individuals or groups that argue that they are the

¹³ N. Lerner, "Incitement in the Racial Convention: Reach and Shortcomings of Article 4," *Israel Yearbook on Human Rights*, Vol. 22, P1, pp. 5-7.

¹⁴ UN GAOR Supp. (No. 18) at 37, UN Doc. A/8718 (1972).

¹⁵ Lerner (Note 13 above), p. 14.

victims of violations of the Convention. As noted, this provision is optional – states can decide whether or not to activate Article 14. The State of Israel has chosen not to exercise this option, reflecting the consistent position of the state regarding the acceptance or rejection of the authority of bodies such as this Committee. The result is that the State of Israel discriminates against its own citizens, denying them the opportunity to receive the institutionalized relief or remedy available to the citizens of states that have accepted the option of granting their citizens the procedural right for their protection, under certain conditions.¹⁶

The ICERD does not explicitly mention racism on religious grounds. The reason for this is historical. On December 12, 1960, the General Assembly of the United Nations adopted a resolution (1510(XV)) condemning all manifestations and practices of racial, religious and national hatred in the political, economic, social, educational and cultural spheres, as a violation of the United Nations Charter and of the Universal Declaration of Human Rights. A proposal was subsequently drafted relating to manifestations of racial and national prejudice and religious intolerance. However, when the convention was finally drafted, it was decided to prepare two separate conventions, one on the subject of racism, and the other on the subject of religious intolerance. The convention on the subject of racism was prepared and signed – this is the ICERD. The convention on religious intolerance has yet to be completed.¹⁷

Despite this, the prevailing opinion is that discrimination or racism on religious grounds may also be included within discrimination or racism on racial and ethnic grounds.¹⁸ The approach is that a broad interpretation of the term “ethnic” should be adopted, given the underlying goal of anti-racist legislation – to promote tolerance of the other.¹⁹

¹⁶ N. Lerner, “A Partial Struggle against Racism – All the Components of the Convention against Racial Discrimination Should be Adopted,” *Ha’aretz*, June 26, 2005 (in Hebrew).

¹⁷ N. Lerner, *The UN Convention on the Elimination of all Forms of Racial Discrimination* (Sijthoff, 1970), p.12.

¹⁸ Talia Einhorn (Note 5 above), pp. 44-49.

¹⁹ See, for example, the ruling of the British House of Lords: *Mandla v Dowell Lee* (H.L.(E.)), (1983), A.C. 543.

Israeli Law

Israeli law in the field of incitement to racism has undergone a number of changes since the establishment of the state. Until 1985, the law included various provisions enabling the prosecution and penalization of persons inciting to racism. Article 133 of the Penal Code, 5737-1977 (hereinafter – “the Penal Code”) enabled the prosecution and penalization of any person committing an act for the purposes of inciting revolt; or attempting, preparing himself or association with another in order to commit such an act. Article 134 of the Penal Code enables the prosecution and penalization of any person publishing, printing or copying a publication liable to cause revolt (Article 134(A)); or importing a publication liable to cause revolt (Article 134(B)); or possessing a publication liable to cause revolt (Article 134(C)). “Revolt” is defined in Article 136 of the Penal Code, *inter alia*, as: “Arousing strife and hostility between different sections of the population” (Article 136(4)). Accordingly, it is possible to prosecute and penalize a person who makes racist statements or distributes and publishes racist content directed against specific sections of the population, on the grounds that he is attempting to arouse strife and hostility between those different sections.²⁰

Article 4 of the Prohibition of Defamation Law, 5725-1965, establishes that “defamation of a group of persons or of a public that are not a corporation is tantamount to defamation of a corporation, unless it does not include grounds for a civil suit or complaint, and no indictment will be filed in accordance with this article otherwise than by or with the consent of the Attorney General.” This provision also enables the Attorney General, as head of the general prosecution system, to prosecute and penalize a person who makes racist statements against a specific group within society.

However, the appearance during the late 1970s of the Kach movement, headed by Meir Kahane, which advocated the establishment of a Halachic Jewish state “free” of Arabs, introduced in the public arena a political faction that adhered to an openly racist ideology. After Kahane’s election to the Knesset in 1984, the leader and his movement intensified their racist activities. Kahane published and disseminated his racist ideas against the Arab citizens of Israel in written form, exploited the Knesset podium to make speeches inciting against Arab citizens, and fielded proposed laws with racist orientation. He

²⁰ Indeed, in HAD 1789/98 *State of Israel v Kahane*, *Piskei Din* 50(5) 145, pp. 158-169, the Supreme Court ruled that incitement to racism is included in the definition of the offense of “incitement to revolt.”

claimed the right to disseminate his racist ideas in all the official media, abusing his parliamentary privilege in order to incite strife and hostility during visits to Arab communities – visits whose explicit goal was to convince the Arab residents to leave Israel.

In 1985, against this background, the Knesset began legislative processes intended to combat racism. Two proposed laws were filed almost simultaneously: The proposed Basic Law: The Knesset (Amendment No. 12), and the proposed Penal Code (Amendment No. 24), 5745-1985. In the explanatory comments to the former proposal (which included a reference to the second proposal),²¹ it was clarified why the provisions in existing law were no longer adequate, even those that permitted the penalization of publications constituting racial incitement (p. 196):

"The Penal Code, 5737-1977, prohibits acts of inciting revolt and publications inciting revolt (Articles 133 and 134); the term 'inciting revolt' includes 'arousing strife and hostility between different sections of the population' (Article 136(4)), and this may be used to penalize manifestations of racist incitement. As long as the phenomenon of racist incitement was marginal, the said provision was adequate, as were the said provisions in the Prohibition of Defamation Law, 5725-1965, particularly that relating to defamation of a public. However, as racist incitement has become a disturbing problem, the educational need has arisen to amend the penal code in order to include a provision explicitly prohibiting the publication of incitement to racism. The proposed law will also contribute to the effectiveness of the response to manifestations of racist incitement, since it will no longer be necessary to prove the publisher's intention when the incitement speaks for itself".

The legislation of the Basic Law: The Knesset was completed in the same year. A provision was added stipulating that a list of candidates would not participate in the Knesset elections if its goals or actions explicitly or implicitly constitute "incitement to racism" (Article 7A(3)).²² In 1986, the legislation of the amendment to the Penal Code was completed, adding a special item devoted to racism (Item A1 of Section H), which has been amended several times over the years.²³

These provisions were complemented by legislation regulating the activities of the Second Authority for Television and Radio and cable television

²¹ PL 1728, April 17, 1985, pp. 195-196.

²² A similar provision is included in Article 39A of the Local Authorities Law (Elections), 5725-1965, and in Article 5 of the Political Parties Law, 5752-1992.

²³ For the full text of Item A1, see Appendix C below.

operations. This legislation imposes a prohibition on broadcasts of a racist character.²⁴

Accordingly, Israeli legislation has adopted a forceful approach to racist incitement, prohibiting and criminalizing numerous racist actions, including: the possession of a racist publication for the purpose of dissemination; offenses committed on racist grounds; incitement to violence or terror; and incitement to revolt, whether or not these offenses are committed as part of permanent associations.

However, Israeli legislation lacks provisions relating to the prohibition of the activities of racist organizations. There is no explicit prohibition in Israeli law against the existence of racist organizations. Sporadic provisions relate indirectly to this matter, prohibiting certain aspects of the activities of racist associations,²⁵ but these provisions are inadequate and possibly inconsonant with the provisions of Article 4 of the ICERD. Accordingly, on June 19, 2005, the Knesset Ministerial Committee for Legislation approved a proposed law seeking to define, within the Penal Code, “racist association” as a “prohibited association.” The proposed law aims to fill this lacuna in Israeli legislation, providing for the addition to the list of “prohibited associations” a “company of persons, including organizations or political parties, through whose constitution or propaganda or activities it encourages or finances or advocates or incites to racism or racial discrimination.”²⁶

²⁴ Article 46(A)(2) of the Second Television and Radio Authority Law, 5750-1990; Rule 15 of the Rules of the Second Television and Radio Authority (Ethics in Television and Radio Broadcasts), 5754-1994; and Rules 3, 6(B)(9) and 29(A)(5) of the Bezeq Rules (Broadcasts of a Franchisee), 5748-1987.

²⁵ Article 145(2), combined with Article 136(4) of the Penal Code; the Struggle against Criminal Organizations Law, 5763-2003; Article 2 of the Companies Law, 5759-1999; Article 3 of the Associations Law, 5740-1980.

²⁶ Yuval Yoaz, “The Knesset: ‘A Racist Association is Prohibited,’” *Ha’aretz*, June 20, 2005. See also the opinion of Prof. Nathan Lerner, one of the best-known Israeli jurists in the field of international law, in his article “A Partial Struggle against Racism – All the Components of the Convention against Racial Discrimination Should Be Adopted in Law,” *Ha’aretz*, June 26, 2005.

Manifestations of Racism against the Palestinian Minority

The Palestinian minority in the State of Israel suffers gross racism at the hands of the Jewish majority. This phenomenon has been deeply ingrained in Israeli society for decades. The Palestinian minority that remained in Israel after the 1948 War was viewed by the Jewish majority as an alien population – representatives of the Arab world inside a Jewish state. The Arabs were considered a “security threat,” a type of Fifth Column whose loyalty to the state should be constantly questioned.²⁷

This is an enduring and endemic phenomenon that began with the establishment of the state and the imposition of martial law on the Palestinian minority, continued through the 1970s²⁸ and 1980s²⁹ (the most extreme manifestation of racism in this period was Kahanism). Racist tendencies were obscured somewhat (although still present³⁰) following the end of the first

²⁷ Mustafa Kabha, “Possible Future Developments in the Relations between the State of Israel and Arab Population,” *Mifneh* (Forum for Social Affairs), Vol. 44, pp. 50-53, p. 51 (in Hebrew).

²⁸ The gravest manifestation of racism in the 1970s came in 1976, when the government decided to confiscate some 5,000 acres of Arab-owned land in the Sakhnin area in order to “judaize” the Galilee. In response, the Palestinian public called a general strike and protest demonstrations on March 30. The demonstrations were violently suppressed by the IDF and police, and 6 Arab demonstrators were killed. The anniversary of these events has been observed as “Land Day” by the Palestinian minority ever since.

²⁹ In 1985, a representative national opinion poll carried out by Prof. Sami Samuha (comprising 1,200 Jewish respondents) found that 44 percent of Jews believe that the majority of Palestinian citizens will never reach the level of development attained by Jews; 58 percent feel that it is impossible to trust most Palestinian citizens; 53 percent believe that most Palestinian citizens do not value Jewish life; 60 percent state that the supervision of Palestinian citizens should be intensified; 42 percent believe that the state should seek and use every opportunity to encourage Palestinian citizens to leave the country in order to reduce their number; 22 percent are willing to accept **only** the removal or expulsion of the minority as a solution to the problem of Jewish-Arab relations; and 24 percent believe that Palestinian citizens should be denied the right to vote in Knesset elections. The results of this poll confirmed the findings of other polls held in 1976 and 1980 by the same researcher. Sami Samuha, “Jewish Racism,” *Journal of Literature and Culture*, Vol. 76, pp. 20-21, p. 20 (in Hebrew).

³⁰ A poll in 1999 showed that the Palestinian minority was the section of the population most hated by the Jewish public, due to its distinct collective identity. Ami Pedhatzur, “The

intifada and the signing of the Oslo Accords, but have erupted again, in an aggressive form, in early October 2000, and continue unabated.

The events of October 2000 constituted a dangerous turning point in the relations between the Jewish majority and the Palestinian minority, exacerbating the lack of trust among the Jewish majority in the Palestinian minority and its perception as being disloyal. Jews tended to avoid, and in some cases even to boycott, Palestinian citizens, service providers and communities, and a growing section of the Jewish population favored the denial of basic rights to the Palestinian minority (the right to vote, the outlawing of Arab political parties, the expulsion of Arabs, etc.)³¹

The events of October 2000 also raised the stakes in terms of racism and violence against the Palestinian minority. In addition to the twelve citizens shot dead by the police during these events, acts of violence were also committed against Palestinian citizens and property.³² Since these events, and against the background of the ongoing second *intifada* in the Occupied Territories, racism against the Palestinian minority in Israel has found increasingly fertile ground in Israeli society, and could be said to have become an integral part of the country's political culture. Opinions, statements and actions that were once considered extremist, such as the idea of "transfer," have become part of mainstream Israeli (Jewish) society, and have even found official recognition in a law legitimizing this racist concept.³³

Foreigner, *The Other and the Stranger: Israelis' Attitudes to the Strangers in Their Midst*, *Mifneh* (Forum for Social Affairs), Vol. 27, pp. 23-26, p. 25 (in Hebrew).

³¹ Sami Samuha, "Approaches on Arab-Jewish Relations in Israel and the October Riots," *Studies in National Security* (Issue 1, Sivan 5751-June 2001), pp. 17-32, at pp. 21, 23 (in Hebrew).

³² For example, on October 7 and 9, 2000, Arab mosques, employees and businesses in Tiberias were attacked. A gas station at the Golani intersection was set on fire, and police who attempted to stop these incidents themselves came under attack. On the night of October 9, 2000, Jews in Migdal Ha'emek blocked the main road, throwing stones at cars they believed to be owned by Arabs. Several of the attackers were detained, and in the early morning dozens of youths descended on the police station, demanding their release. On the same day, in Afula, 700 Jewish demonstrators blocked Road No. 65 with rocks and stones, causing physical harm to a police officer. An attempt by some one hundred of these demonstrators to enter the neighboring Arab village of Nain and attack residents was prevented by a police force, which halted the demonstrators just 50 meters from the first homes in the village. On the night of October 9, 2000, hundreds of demonstrators damaged Arab-owned shops and cars. The following day, eleven Arab businesses in the Old City of Acre (Akka) were attacked. In the Hatikva neighborhood of Tel Aviv and in Bat Yam, a substantial police force prevented hundreds of Jews from attacking Jaffa on October 9, 2000. An attack on the Hassan Bek Mosque by the promenade in Tel Aviv forced Arab worshippers to remain inside the mosque for hours and caused damage to the building, in full sight of dozens of police officers. Danny Rabinowitz, "The October Riots," *Ha'aretz*, October 19, 2004 (in Hebrew).

³³ Rehavam Zeevi Commemorative Law, 5765-2005, see below in this chapter.

Moreover, the political culture of racism has slowly been adopted as the official ideology of the state, reflected **explicitly** in various laws (and in proposed laws that have not yet been passed) introduced over the last two years.³⁴

Racism has become a broad-based and deeply ingrained phenomenon in Israeli society, encompassing all sections of Jewish society: government ministers, academics, security experts, official and quasi-official bodies and private citizens.

The following section reviews different manifestations of racism against the Palestinian minority over recent years in various fields. The review is only partial, but it offers some indication of trends in the behavior and attitudes of the state and of the Jewish majority toward the Palestinian minority and its elected representatives.

Racist Statements

In recent years, government ministers, Members of Knesset, religious leaders, academic, public figures and well-known individuals have made racist statements and incited to racism, and, in some cases, even to violence, against the Palestinian minority and its representatives, and against Islam.

After his election to the position of chairperson of the National Religious Party faction in the Knesset, and after he became a member of the government, Minister of Housing Efi Eitam was interviewed by *Ha'aretz* newspaper. In the course of the interview, Minister Eitam referred to the Palestinian minority in harsh times, calling them “a cancer”:

“I say that the Israeli Arabs are, to a large extent, a time bomb underneath the whole democratic system in Israel. The State of Israel now faces an existential threat that has the character of an elusive threat, and the nature of elusive threats is that they resemble a cancer... The Israeli Arabs have become a fifth column, we will have to consider whether Israeli democracy can continue to enable this population to participate in it.”³⁵

On March 9, 2004, in a speech before the Knesset plenum, former Minister of Transport, MK Avigdor Lieberman (National Union) made the following interjection, directed at Arab Members of Knesset:

³⁴ For example, the Israel Lands Law (Amendment – Allocation of Land for Jewish Settlement). See details below in this chapter.

³⁵ *Ha'aretz*, March 22, 2002 (in Hebrew).

“You are like [Hamas commander] Mohammed Deif, you want to destroy the state, just by different tactics. In another country your place would be in the prisons.”

In August 2003, during a tour of the Naqab (Negev), former Minister of Internal Security, MK Tzahi Hanegbi (Likud) made the following comments during remarks relating to Bedouin citizens:

“It’s really a war. The city of Beersheva has been overrun by gangs of Bedouin delinquents... I say, guys, rise up in your thousands, take sticks and if the Bedouin delinquents come into Emek Sarah, drive them out. Enough defeatism and surrender!”³⁶

On February 24, 2004, at a ceremony marking the 26th anniversary of a terror attack on the main coastal road, Deputy Minister of Defense MK Zeev Baum (Likud) made the following comments during his speech:

“What’s the problem with Islam in general? What’s the problem with the Palestinians in particular? Is it a cultural deficiency [or] a genetic defect? There is something inexplicable about this ongoing murderousness.”

Baum’s comments provoked a political and public storm. Many Members of Knesset urged him to withdraw his comments or resign. However, most Members of Knesset from Baum’s own faction did not condemn his remarks. Indeed, the leader of the “Yesha Lobby” in the Knesset, MK Yechiel Hazan (Likud) expressed support for the deputy minister, commenting:

“Baum is one hundred percent right, given the fact that for decades Arabs have been slaughtering Jews. You can’t believe Arabs even when they’ve been forty years in their grave. It’s in their blood – murdering Jews is something that comes naturally to them. That’s the meaning of the expression that you mustn’t turn your back on an Arab or they will stab you.”³⁷

Hazan did not confine himself to these comments. Ten months later, on December 13, 2004, during a debate in the Knesset plenum, he made the following remarks:

“These Arabs are like worms, all over the place – underground, over ground. In every possible way these

³⁶ *Ma’ariv* (Shabbat supplement), August 1, 2003 (in Hebrew).

³⁷ Amnon Barzilai, “Baum: Do Palestinians Murder because of a Genetic Defect? Hazan: Don’t Believe Arabs Even When They’re in Their Grave,” *Ha’aretz*, February 25, 2004 (in Hebrew).

worms have been attacking the Jewish people for 100 years, and we extend our hand in peace to them as if nothing happened... You, the Arabs sitting in this building, instead of concerning yourselves with the affairs of the Arabs in the Land of Israel and their rights, are preoccupied with the Palestinians, the same Muslim terrorists who have murdered Muslim soldiers. They are terrorists who dig in the sand. Not a people looking for peace.”³⁸

On October 15, 2004, Minister of Internal Security MK Gideon Ezra (Likud) said, in an article in *Yediot Acharonot*:

“There are Arab citizens in the State of Israel. This is our biggest problem. You can finish with Gaza and finish with Judea and Samaria, but you’ll still be left with the biggest problem.”

In the same article, Ezra turns his attention to the Arab Members of Knesset:

“Dahamsha is a good parliamentarian, he respects the rules. There are some worse sonsofb*hes. I would support the idea that some of them should not be in the Knesset. Issam Makhoul is a danger to the state. He is against the [nuclear] reactor, against the [security] fence. Let him go and live somewhere else.”**

Referring to the people killed in a recent double suicide attack in Beersheva, Minister Ezra commented:

“This attack could have been prevented if there had been a Bedouin security guard on the bus, because only a Bedouin can identify an Arab who isn’t a Bedouin. Only a Bedouin can tell the difference between a Bedouin and a Palestinian... In answer to your question, that is correct: after the terror attack in Afula, I did say that Arabs should guard the malls, because they can identify Arabs. I said then 'smell.’”³⁹

Ezra’s last comment here relates to other remarks he made following an attack in Afula in May 2003, when he stated, discussing the question of security guards in buses and malls:

³⁸ “MK Hazan: Arabs Are ‘Worms,’” *Al-Itihad*, December 14, 2004; <http://www.arabs48.com>, December 13, 2004 (in Arabic).

³⁹ *Yediot Acharonot*, October 15, 2004 (in Hebrew).

“The Arab can smell [another] Arab.”⁴⁰

Elsewhere, he commented:

“As I see it, Israeli Arabs can identify members of their own people who are coming to kill innocent people.”⁴¹

Former Minister of Tourism, MK Binyamin Elon (National Union), stated during a meeting with Christian missionaries in February 2004 that the “Muslim nation” in general is a “**murderous**” nation. He asked the missionaries:

“To go to the murderous Muslims, who have forgotten that it is forbidden to murder, and to turn them into believing Christians and good people.”⁴²

Dr. David Bukai, a lecturer in the Faculty of Social Sciences at Haifa University, made comments several times during the first semester of the 2004-2005 academic year that included racist statements against “the Arab.” He stated that terror is the problem of the Arab, and that the Prophet Mohammed was the first terrorist. Dr. Bukai also commented that “**We should shoot terrorists in the head in front of their families**” by way of a deterrence, and “**destroy a whole house, with everyone in it,**” in order to get rid of one wanted person. On another occasion, Dr. Bukai stated that “**the Arabs are just alcohol and sex.**” He also commented that “**the Arabs are stupid and have contributed nothing to humanity.**” During a class on the subject of “The Pan-Arab System and the Question of Palestine,” he distributed a sheet including the following comment:

“Accordingly, anthropologists state, when an Arab or Muslim begins his remarks with the expression ‘By Allah,’ they probably intend to lie.”⁴³

Dr. Bukai’s “scientific” articles also reflect his racist approach. In one article, he writes:

“Among the Arabs, you do not find the phenomenon that is so typical of Judeo-Christian culture – doubts, a sense of

⁴⁰ “Minister Ezra: It Takes an Arab to Smell an Arab,” <http://www.walla.co.il>, May 21, 2003 (in Hebrew).

⁴¹ *Ma’ariv*, March 17, 2003 (in Hebrew).

⁴² *Al-Sunarah*, February 13, 2004 (in Arabic); *Al-Mithaq*, February 13, 2004 (in Arabic).

⁴³ Meron Rappoport, “Don’t Interrupt Me,” *Ha’aretz* (Weekend supplement), April 29, 2005 (in Hebrew). It should be noted that Dr. Bukai has denied making the comments attributed to him. However, Deputy Attorney General Attorney Shai Nitzan instructed the police to instigate an investigation against Dr. Bukai on suspicion of racial incitement. This investigation has not yet been completed.

guilt, self-torture – “Maybe we are not one hundred percent right,” or “Maybe we should have reacted differently.” These phenomena are completely unknown in Islamic-Arab society with regard to strangers. They have no doubts about their positions or the fact that justice is on their side. They have no sense of guilt that they might have made a mistake. Neither do they have any pangs of conscience or regret that they might have caused injustice to others. The phenomenon of suicide murderers, known as suicide terrorists, is complete proof [of this]. There is no condemnation, no remorse, no problem of conscience among Arabs and Muslims anywhere, in any social stratum and social class.”⁴⁴

In the same article, Bukai adds:

“Above all, the most important spectrum for understanding the Arab personality is that between subservience and fawning to those who seem to hold power, on the one hand, and vicious, violent, anarchistic and unbridled savagery, on the other hand.”

A particularly vicious series of racist comments, and even incitements to violence, was made by the rabbi of the city of Safed, Rabbi Shmuel Eliahu, a leading religious Zionist figure and a member of the Council of the Chief Rabbinate. In August 2002, Rabbi Eliahu issued a passionate call to remove all the Arab students at the academic college in Safed. In an interview for the morning program on Channel 7 and IDF Radio, shortly after a terror attack on a bus at Meron intersection near Safed, the rabbi emphasized that **“only those who show loyalty to the State of Israel are eligible to study.”** He also attacked Palestinian citizens in comments made on the Internet. On the site *Kippah*, for example, a businessman asked him whether it was permissible to provide Arabs with information on apartments for rental in Haifa. The rabbi responded:

“It is forbidden. Certainly today, when any renting of an apartment for an Arab from Gaza or from the Galilee is liable to provide a hiding place for murderers or their evil weapons.”

When asked on the proper way to treat the Arabs, he replied:

“Not only is it forbidden to greet them; it is forbidden to employ them. It is forbidden to buy a tomato from them or

⁴⁴ David Bukai, “The First Cultural Flaw in Thought: The Arab Character,” in: *Islamic-Arab Political Culture: A Vital Key to Understanding Arab Politics and the Israeli-Arab Conflict*, 2003 (in Hebrew).

to sell them a car. A nation does not provide a livelihood for its enemies.”

Rabbi Eliahu also praised the members of the Jewish terrorist underground⁴⁵:

“I don’t think that the members of the Jewish underground are “base murderers,” God forbid... It is hard for me to judge people who have seen with their own eyes the leaders of state embracing Basam Shaq’ah, who was the mayor of Nablus and the main person inciting to murder... So they cut off Basam Shaq`ah’s legs... I don’t want, God forbid, to speak out against the members of the Jewish underground, who were and remain completely righteous.”

In July 2004, Rabbi Eliahu gave an interview to the local newspaper *Kol Ha`emek Vehagalil*. Replying to a question as to whether Jewish women are being held captive by Arabs in the village of `Akbarah, near Safed, the rabbi replied:

“His is another kind of war that the Palestinians are waging against us, and we have to know how to defend ourselves against it. We’re talking about young Jewish women aged 15 to 25, from hard-working families, who have been seduced by young Arab men... Jews should be with Jews, not vice versa [*sic*].”

A few days later, the rabbi was interviewed on Israel Radio, and commented:

“When a terror attack happens, we Jews all walk around in mourning, our heads lowered, and sometimes even crying. But in the Arab villages, even within the borders of Israel, we often see manifestations of joy. How is a Jewish woman supposed to feel if she hears of a terror attack and is crying, while her husband is dancing with joy and drinking, and the whole village is putting out flags and maybe even setting off fireworks?”

On the Internet site “Moriah – The Site for the Jewish Home,” Rabbi Eliahu was asked whether it was permissible to stay at a hotel that employs Arabs. His reply:

⁴⁵ The Jewish terrorist underground was a movement in the early 1980s, made up of roughly 30 Jewish settlers, many of them prominent figures in the settler movement, who were convicted of a series of offenses. These offenses ranged from membership in a terrorist organization to carrying out attacks on Hebron's Islamic University and on an Arab girls' school. Some members of the group were sentenced to life in prison, but all were eventually granted presidential clemency and released.

“It would be worthwhile for someone to make a move and get together consumers to avoid using the services of a hotel that employs Arabs... Every time I arrive in such a hotel, I do not eat there, because of problems of Kashrut, and also because of security and esthetic problems. If they take the same level of care about the cleanliness of the food as they do about the cleanliness of their villages, the situation is problematic.”

Replying to a question as to whether a Jew should burn a copy of the Koran in his possession, he replied:

“All the writings of the heathens should be burned. These days one should be careful about this, because it might provoke riots, so such an act should be performed wisely.”

Replying to a question as to whether it is permissible to shoot an Arab who is walking along a busy street in a suspicious manner, as if concealing something:

“You should shout out “Danger! Terrorist!” and point your weapon at him. According to his response, you can tell if he is a terrorist or not. If you have reasonable grounds for suspicion, it is better to kill him than for him to kill and injure dozens of people. If someone comes to kill you, even if there is doubt – you should kill them first.”⁴⁶

The Demographic Threat

The Jewish majority and the state see the Palestinian minority as a demographic threat to the Jewish and Zionist character of the state. Numerous statistical surveys are issued regularly warning of the increased birthrate among this minority, and the danger that, in the not too distant future, it may become a substantial proportion of the population of the state, which could damage Israel’s Jewish character.⁴⁷ The pioneer of this approach and of the “theory of the demographic threat” is Professor Arnon Sofer, lecturer in the Department of Geography at Haifa University, who has been warning for years of the demographic threat posed by Palestinians in the Occupied Territories and by

⁴⁶ Gideon Levy, “The Rabbi Said, But the Attorney General is Reluctant,” *Ha’aretz*, November 29, 2004 (in Hebrew).

⁴⁷ For an example of such an article, see Avraham Tal, “Demography Isn’t a Scarecrow,” *Ha’aretz*, January 24, 2005 (in Hebrew).

the Palestinian minority inside Israel.⁴⁸ A number of conferences have been convened to discuss this problem and potential solutions.⁴⁹ Demographic “concern” has grown over time, acquiring a prominent status in shaping national policy.⁵⁰

Former Prime Minister Benjamin Netanyahu (Likud) put the point in simple terms during his speech at the Herzliya Convention on December 17, 2003, commenting that:

“We have a demographic problem. But it centers not on the Palestinian Arabs in the territories, but rather on the Israeli Arabs.”⁵¹

A further manifestation of this approach came in 2002, when Minister of Labor and Social Affairs Shlomo Beniziri (Shas) revived the activities of the Public Council for Democracy, in order to address the “demographic threat.”⁵² The Council is an advisory body charged with supervising the operations of the Demography Center in the Ministry of Labor and Social Affairs. The Council was first established in 1967, but its activities were halted and recommenced several times. Its revival in 2002 evidently reflected concern at the emergency of a non-Jewish majority between the River Jordan and the Mediterranean. The goal of the Council is to find ways to maintain the Jewish majority in Israel, including by means of encouraging an increase in Jewish birthrates.

Transfer

The idea of expelling the Palestinian minority from Israel, which is known as “transfer,” is as old as the State of Israel itself.⁵³ In recent years, however, it has become increasingly acceptable among the Jewish majority. In the past, transfer was considered an extremist and grossly immoral idea. Now, it is not only considered legitimate, but no moral problem is identified. An increasing

⁴⁸ In particular, see his study from 2001: *Israel: Demography 2000-2020: Possibilities and Dangers* (in Hebrew).

⁴⁹ On December 19-21, 2000, a convention (called the Herzliya Convention) was held in the city of Herzliya under the title “The Balance of National Resilience and Security.” The convention brought together senior national figures in different fields: ministers, security experts and academics. Among other issues, the convention discussed the “Demographic Threat” and its solution. Since then, the convention has become an annual event. On May 17, 2005, a conference was held at Haifa University on the subject of “The Demographic Threat and Israel’s Demographic Policy.”

⁵⁰ Aluf Ben, “Under the Demographic Umbrella,” *Ha’aretz*, February 2, 2005 (in Hebrew).

⁵¹ <http://www.ynet.co.il>, December 17, 2003 (in Hebrew).

⁵² *Ha’aretz*, November 2, 2005 (in Hebrew).

⁵³ Taisir Al-Balasi, “On the Heritage of Rehavam Zeevi,” <http://www.mahsom.com>, July 18, 2005 (in Hebrew).

number of members of the political and public elite support the idea. The essence of the idea was expressed succinctly by former Minister of Tourism, MK Binyamin Elon:

“There is voluntary transfer, transfer by agreement and transfer during war. Voluntary transfer means helping Arabs to want to get on the buses – “Coercing them until they say we want to,” as it were. We can play with this “we want to” on the political and moral levels. For example, I can close the universities to you, I can make life hard for you, until you want to leave.”⁵⁴

In May 2004, then Minister of Tourism MK Avigdor Lieberman (National Union) presented the prime minister with a plan for solving the Israeli-Palestinian conflict. Among other ideas, the plan advocated the expulsion of 90 percent of the Palestinian minority to the Palestinian state to be established in the Occupied Territories.⁵⁵ According to Lieberman, the main problem facing the State of Israel is not the Palestinians in the Occupied Territories, but the Palestinian minority inside the state.⁵⁶ Lieberman also presented the plan to the representative of the Russian President Vladimir Putin to the Quartet, Alexander Glukin, at a meeting also attended by the Russian ambassador in Israel, Gennady Tarasov.⁵⁷ In an interview for the Arabic-language newspaper *Kul al-`Arab*, he made the following comments:

“I certainly still believe that we should prepare a plan for expelling the Arabs who live in the State of Israel – those who do not recognize their obligations. Transfer also applies to those who do not recognize the state as a Jewish and Zionist state and do not recognize Hatikva as their national anthem – we don’t need them and we should expel them. Those who do recognize this – then there is no difference between them and I in terms of rights. It also depends on meeting all the obligations, including joining the Israeli army. My [Knesset] faction recently tabled the proposed Compulsory Recruitment Law relating to the Israeli Arabs, and we will do everything we can to implement this law. People who want all the rights have to meet the obligations.”⁵⁸

⁵⁴ From an interview with the minister in *Nekudah*, December 2001 (in Hebrew).

⁵⁵ *Panorama*, May 28, 2004 (in Arabic); *Sawt al-Haq wal-Hurriyah*, May 28, 2005 (in Arabic).

⁵⁶ *Kul al-`Arab*, November 5, 2004 (in Arabic).

⁵⁷ *Ha'aretz*, May 31, 2004 (in Hebrew).

⁵⁸ *Kul al-`Arab*, May 28, 2004 (in Arabic).

On March 16, 2004, at a conference organized by the extreme right-wing journal *Sheva* at the Hyatt Hotel in East Jerusalem, Deputy Minister of Trade and Industry, MK Michael Eitan (Likud) called for the “voluntary” expulsion of the Palestinian minority since, in his opinion, they constitute the number one danger facing Israel:

“The Arabs in Israel must decide where their loyalties lie – to the State of Israel or the Palestinian Authority. They must meet their obligations in order to receive rights. Those who meet their obligations can receive their full rights, but those who do not – we must make sure that they do not remain here.”⁵⁹

In January 2004, the extreme right-wing activist Baruch Marzel announced the establishment of a new political party – the National Jewish Front. The Registrar of Factions approved the establishment of this party.⁶⁰ Marzel explained that the platform of the new party would include the expulsion of all Arabs from the State of Israel and from the Occupied Territories. He noted:

“For me, there is no difference between the Israeli Arabs and the Palestinians. Those who are enemies should not be here.”⁶¹

Marzel added:

“The expulsion of the Arabs from Israel and the Occupied Palestinian Territories is the one and only solution, and it will solve all Israel’s problems, since expulsion will uproot Arab terrorism, while the Israeli economy will blossom, and individual and national security will be enhanced... The expulsion will be the solution to all the social problems... Millions of Jews in Israel face real danger due to the monstrous and barbaric character of the Arabs and their murderous and insane hatred of Jews.”⁶²

In an interview for *Ha’aretz* newspaper, Professor Benny Morris, professor of History at Ben Gurion University, addressed, among other issues, the question of the expulsion of the Palestinian minority from the State of Israel, both during the 1948 War and in current times. He made the following comments:

⁵⁹ *Al-Ittihad*, March 17, 2004 (in Arabic).

⁶⁰ *Al-Ittihad*, January 12, 2004 (in Arabic).

⁶¹ *Ha’aretz*, January 12, 2004 (in Hebrew).

⁶² *Al-Ittihad*, January 12, 2004 (in Arabic).

“ [Interviewer:] I can hardly believe what I am hearing.

[Benny Morris:] If the story has a sad ending from the Jewish perspective, this will be because Ben Gurion failed to complete the transfer in 1948. Because he left a large, explosive demographic reserve in the West Bank and Gaza and inside Israel itself.

[Interviewer:] If you had been in his place, would you have expelled them all? All the Arabs in the country?

[Benny Morris:] I am not a statesman. I am not putting myself in his place. But as a historian, I determine that a mistake was made here. Yes. The failure to complete the transfer was a mistake.

[Interviewer:] And today? Do you support transfer today?

[Benny Morris:] If you are asking me whether I support the transfer and expulsion of Arabs from the West Bank, Gaza and perhaps even Galilee and the “Triangle” – I would tell you not right now. I am not willing to be party to such an act. In the present circumstances this is immoral and unrealistic. The world would not let us, the Arab world would not let us, it would destroy Jewish society from within. But I am willing to say that under other, apocalyptic circumstances, that may materialize in five or ten years, I can see expulsions. If there are atomic weapons around us or an overall Arab attack on us, and a state of fighting on the fronts, with the Arabs on the home front shooting convoys setting off for the front line – then acts of expulsion would be completely reasonable. They might even be essential.

[Interviewer:] Even the expulsion of the Israeli Arabs?

[Benny Morris:] The Israeli Arabs are a time bomb. Their descent into total Palestinization has turned them into an annex of the enemy in our midst. They are a potential fifth column. They can destabilize the country both demographically and in security terms. So if Israel again faces an existential threat as in 1948, it might be forced to act as it did then”.⁶³

⁶³ Ari Shavit, “Waiting for the Barbarians,” *Ha’aretz* (Weekend supplement, January 9, 2004 (in Hebrew).

Racist Laws and Proposed Laws

Nationality and Entry into Israel Law (Temporary Order), 5763-2003

In recent years, several laws have been passed in Israel that are essentially racist in character. The most important of these is the Nationality and Entry into Israel Law (Temporary Order), 5763-2003, adopted by the Knesset on July 31, 2003.

On June 4, 2003, a government bill was brought before the Knesset, reflecting the main points of Government Decision No. 1813 from May 15, 2002. Government Decision No. 1813 related to “attention to illegal entrants and the family unification policy regarding residents of the Palestinian Authority of Palestinian origin.” From 1999 through May 12, 2002, Israel applied a procedure intended to regulate the naturalization of all spouses of Israeli citizens and the status to which they were entitled pursuant to their marriage (“the gradual procedure”). According to this procedure, the process of receiving official status in Israel for the spouse of an Israeli citizen took at least four years, after which time the spouse would be eligible for naturalization. In March 2002, however, then Minister of Interior MK Eli Yishai (Shas) instructed the Population Registry to halt processing of all applications requesting the granting of official status in Israel to the spouses of Palestinian citizens of Israel. This freeze order was issued in order to reduce the number of residents of the Occupied Territories who receive Israeli citizenship following their marriage to Palestinians holding Israeli citizenship. The authorities claimed that this step was taken following the terror attack at the Matza restaurant in Haifa, which was carried out by a person one of whose parents had received status in Israel through his marriage to an Israeli citizen.

Government Decision No. 1813 adopted the decision of the Minister of the Interior, establishing, *inter alia*, that the gradual procedure would not apply to the spouses of Israeli citizens married to residents of the Occupied Territories and/or to a person of Palestinian origin, while continuing to apply to the non-Palestinian spouses of Israeli citizens.

The Nationality and Entry into Israel Law (Temporary Order), 5763-2003, adopted Government Decision No. 1813, nullifying all legal provisions permitting the granting of status in Israel to residents of the West Bank and Gaza Strip. The law established a prohibition on the submission of new applications by citizens relating to the status of spouses who are residents of the West Bank and Gaza Strip; on the granting of status in Israel to a person who is a resident of the West Bank and Gaza Strip, unless the application was filed prior to May 12, 2002; and on the upgrading of a status granted prior to May 12, 2002 to a resident of the West Bank and Gaza Strip (including upgrading to temporary residency, permanent residency and citizenship) – even if the applications had already been approved and the applicants had met all the tests of the gradual procedure.

The law explicitly excludes the Jewish settlers resident in the settlements in the Occupied Territories. Its provisions are applied on an overtly national basis, and it applies solely to Palestinians.

Key human rights organizations around the world, as well as the UN Human Rights Committee and the European Union, warned that this law violates human rights and the provisions of international law, and issued statements opposing the law.⁶⁴

Since the enactment of the law, it has been extended several times (the law is a temporary order, valid for only one year), most recently on July 27, 2005. Several amendments were introduced in the last extension,⁶⁵ “moderating” slightly the grave injury to the process of family unification caused by the law. According to the amendments, the minister of the interior is permitted, at his discretion, to authorize applications for family unification for Palestinian residents of the Occupied Territories: for men, if aged 35 and above; and for women – if aged 25 and above. This provision was not previously included in the law.

The new law explicitly refers to the ethnic identity of an individual, impairing the rights granted to certain citizens on an ethnic or national basis. As such, it not only discriminates on the grounds of nationality or ethnic affiliation, thus impairing the constitutional right to equality of all citizens of Israel, but it is also tainted by overt racism.

The promoters of the law justified its enactment in terms of security needs, given the increasing involvement in “terror attacks” of residents of the West Bank and Gaza Strip who had received official status in Israel through family unification. This was also the reason quoted by the State Attorney’s Office in its response to a petition filed to the Supreme Court in July 2003 to nullify the law.⁶⁶ On April 4, 2005, however, Prime Minister Ariel Sharon declared, in a special debate on the law, that **“we should not hide behind security arguments, there is a need for a Jewish state to exist.”**⁶⁷ This comment revealed the principal motive behind the enactment of the law – the

⁶⁴ See: European Union, Delegation of the European Union to the State of Israel, Press Release, Statement by Ambassador Giancarlo Chevallard, Head of the European Commission Delegation Regarding the Nationality and Entry into Israel Law (Temporary Order) 2003 (August 4, 2003); UN Committee on the Elimination of Racial Discrimination, Decision 2(63) (August 14, 2003); UN Committee on the Elimination of Racial Discrimination, Decision 2(65) (August 20, 2003); Human Rights Watch Press Release, “Israel: Don’t Outlaw Family Life” (July 2003); Amnesty International Report: “Israel and the Occupied Territories – Torn Families: The Separation of Families on the Basis of Discriminatory Policy,” (July 2004) (in Hebrew).

⁶⁵ Nationality and Entry into Israel Law (Temporary Order) (Amendment), 5765-2005.

⁶⁶ HCJ 7025/03, *Adalah – Legal Center for the Rights of the Arab Minority in Israel et al. v Minister of Interior et al.* (pending).

⁶⁷ <http://www.mahsom.com>, April 5, 2005 (in Hebrew).

demographic motive, i.e. the desire to reduce as far as possible the number of Palestinians in Israel.⁶⁸

Commemoration of Rehavam Zeevi Law, 5765-2005

Rehavam Zeevi (nicknamed “Gandhi”) was a Member of Knesset and head of the Moledet faction. The political ideology of Moledet was based on the “voluntary” transfer of Arabs from all parts of the historical Land of Israel. Zeevi was an extreme right-winger, and many Israeli Jews consider his positions to be racist. He was murdered by Palestinian assassins in October 2001.

On July 12, 2005, the Knesset passed the Commemoration of Rehavam Zeevi Law, 5765-2005. During the preliminary stages of legislation, the Ministerial Committee for Legislation decided to support the proposal, thus ensuring government backing.⁶⁹ The goal of the law, according to Article 1, is “to commemorate the memory of Zeevi and inculcate his works and heritage for [future] generations” by establishing a Rehavam Zeevi Center for the Historical, Geographical and Archeological Study of the Land of Israel, to include:

- A research institute in Zeevi’s name, intended to expand and enrich knowledge relating to Israeli policy, society, culture, economics and defense, with an emphasis on the “vision,” “works” and “heritage” of Zeevi. Among other activities, the institute will run archeological excavations;
- A memorial site to be established in Jerusalem, including a permanent exhibition commemorating Zeevi’s life, “works” and “heritage”;
- Every year, on November 17 (the date of his assassination) a state ceremony will be held by his grave. Flags in national institutions and IDF camps will be lowered to half mast, and schools will note his “character” and “works” in accordance with material to be prepared by the Zeevi Center;
- A library on subjects relating to the Land and people of Israel, including books from Zeevi’s library;
- The state will finance the center.

⁶⁸ The above review of this law is based mainly on the Internet site of Adalah – The Legal Center for the Rights of the Arab Minority in Israel.

⁶⁹ Dalia Shahori, “Now – An Official Memorial Day for the Inventor of Voluntary Transfer,” *Ha’aretz*, March 14, 2005 (in Hebrew).

The law refers to Zeevi's "works" and "heritage." What exactly are they? Dr. Meir Peil summed them up succinctly:

"The entire Land of Israel, through blood, fire and pillars of smoke, and the Ishmaelites [Arabs] who are seen as a herd. If they stay – they have no rights. If they play up – they are expelled. When an area is seized, if it is possible to exploit the tumult and expel as many as possible – that's even better. I would say that Gandhi's heritage is a fascist, chauvinistic Zionist one. This is a classic example of narrow-minded nationalism that could be found around the world in Nazi and fascist elements."⁷⁰

The adoption of this legislation effectively implies that the state has sanctioned a racist approach that advocates the expulsion of citizens from their homeland, adding an official tone to this position through the law. Moreover, the law requires the teaching of Zeevi's heritage in Israeli schools, including Arab schools. In other words, Arab schools will be required to laud a heritage that includes the idea that they should be expelled from their homeland!⁷¹

Proposed Law Permitting Jewish-Only Communities

In 2000, the Supreme Court issued a groundbreaking ruling⁷² establishing that the state is not permitted to discriminate between Jewish and Arab citizens in the allocation of state land, either directly or indirectly. Accordingly, the state could not discriminate by means of allocating land to the Jewish Agency for Israel, a body that sells land exclusively to Jews. The justices thereby accepted the petition by `Adal and Iman Ka`adan, a married couple both of whom are Palestinian citizens, who applied for acceptance to the community settlement of Katzir, established by the Jewish Agency.

In July 2005, in response to this ruling, MK Chaim Druckman (National Religious Party) brought forward a proposed law⁷³ (known as "the Druckman Law"), which would enable the Jewish Agency and the Israel Lands Administration to establish community settlements **for Jews only**, thus circumventing the Supreme Court ruling.⁷⁴ Seventeen members of the government supported the proposal, but it was subsequently shelved. This came following the government decision on July 14, 2002 to ask the Neeman Commission – a public commission appointed to examine the idea of

⁷⁰ *Ibid.*

⁷¹ See Rabah Halabi, "The Tribe Voted for Transfer," <http://www.mahsom.com>, July 13, 2005 (in Hebrew).

⁷² HJC 6698/95 `Adal Ka`adan v Israel Lands Administration, *Piskei Din* 54(1) 258.

⁷³ Israel Lands Bill (Amendment – Allocation of Land for Jewish Settlement).

⁷⁴ <http://www.ynet.co.il>, July 8, 2002 (in Hebrew).

introducing a written Israeli constitution, to consider the question of Jewish and community settlement, and to forward its recommendations to the government. Pending the submission and examination of these recommendations, the government decided to oppose the proposed law.⁷⁵

This decision did not prevent MK Zvi Hendel (National Union) from bringing forth another proposal, which stated that **“it shall be possible to establish communities whose number of residents does not exceed 500 families who wish to maintain a community character, and which shall be intended for settlement only by members of a specific nationality.”** The Knesset legal consultant originally refused to approve the proposed law, since in the first draft Hendel specifically stated that **“an Arab shall not be able to reside in a Jewish communal settlement.”** Only after the Knesset legal consultant reworded the proposal to refer to **“a specific community character”** was the proposal approved for review. Hendel stated that the purpose of the law was:

“To enable the establishment in the State of Israel of a Jewish settlement for national reasons, and without a few Arabs also entering. In any case no Jew even considers living in an Arab settlement, so why the double standard?”⁷⁶

Racism in Sport (in the Stands)

The phenomenon of anti-Arab racism in Israeli society is manifested particularly overtly in the world of sport, and above all in the football stands.⁷⁷ Anyone who visits the stands of Israel’s premiere league clubs encounters numerous songs expressing racist attitudes toward the Palestinian minority; the distribution of racist and inciting printed material and the display of signs; racist epithets leveled at Arab players and visitors from Arab teams; and organized incitement led by gang-leaders who arouse supporters, which sometimes leads to violent incidents on and around the pitch.⁷⁸

In February 2004, during a minute’s silence in honor of the victims of a terror attack in Jerusalem, fans from the Ashdod team began to chant **“Death to Arabs!”** They went on to curse Rami Abu Laban, an Arab player for Hapoel Tel Aviv. During a match between Maccabi Haifa and the Arab team Bnei

⁷⁵ <http://www.walla.co.il>, July 14, 2002 (in Hebrew).

⁷⁶ <http://www.ynet.co.il>, October 11, 2004 (in Hebrew). The proposed law has not yet acquired the status of law.

⁷⁷ Uzi Roshem, “Racists as They Condemn,” *Ha’aretz*, July 8, 2001 (in Hebrew).

⁷⁸ Yair Galili, “Red Card for Racists,” *Ha’aretz*, October 4, 2004 (in Hebrew). See also “Eliminating Racism in the Stands,” *Ha’aretz*, editorial column, April 7, 2004 (in Hebrew).

Sakhnin, Maccabi fans sang **“Anyone who doesn’t jump is a *Shahid*”** and **“We’re going to burn your village.”**⁷⁹

In January 2005, during a match between Beitar Jerusalem and Bnei Sakhnin, Beitar fans sang: **“I hate [the Arab team] Achi Natzeret, I hate Bnei Sakhnin, I swear by the candelabra that there won’t be any Arabs here.”** Chants included **“Let your village burn down”** and **“We’ve got the Temple Mount.”** Fans also cursed the Prophet Mohammed throughout the match. During a match between Hapoel Natzeret Elite and Hapoel Tel Aviv, fans from Hapoel Natzeret Elite sang: **“Achi Natzeret are terrorists, I hate all the Arabs. We’re gonna get a coffin ready for the Achi Natzeret fans – a coffin for all the terrorists.”**⁸⁰

In March 2005, during a derby match between Maccabi Tel Aviv and Hapoel Tel Aviv, the Maccabi fans sang: **“Hapoel is Hizbullah,” “[Hapoel player] To`amah is a *Shahid*,” “This is the Land of Israel, this is the Jewish state.”** Throughout a match between Bnei Yehudah and Bnei Sakhnin, the Bnei Yehudah fans sang **“Death to the Arabs”** and **“Anyone who doesn’t jump is a *Shahid*.”**⁸¹

In May 2005, during a match with Maccabi Petach Tikva, Beitar Jerusalem fans sang: **“I hate you, Salim To`amah, I hate all the Arabs.”** During a match between Hapoel Beersheva and Hapoel Tel Aviv, Beersheva fans chanted **“Death to the Arabs.”**⁸²

At a match between Beitar Jerusalem and Bnei Sakhnin, Beitar fans smashed cars belonging to fans from Sakhnin and beat some of the Arab supporters. One Bnei Sakhnin fan was almost blinded and spent three days in hospital.⁸³

Public Opinion Polls

Public opinion polls among the Jewish majority, carried out by experienced pollsters, reveal the deeply-ingrained racism toward the Palestinian minority, and clearly show the hostility of the Jewish majority toward this minority.

The “Israel Democracy Index – 2003” poll, carried out by the Israel Democracy Institute, revealed alarming findings. In 2003, over half the Jewish citizens of Israel (53 percent) opposed granting fully equal rights to Palestinian

⁷⁹ <http://www.ynet.co.il>, February 24, 2004 (in Hebrew).

⁸⁰ <http://www.ynet.co.il>, January 11, 2005 (in Hebrew).

⁸¹ <http://www.ynet.co.il>, March 22, 2005 (in Hebrew).

⁸² <http://www.ynet.co.il>, May 17, 2005 (in Hebrew).

⁸³ <http://www.ynet.co.il>, April 18, 2005 (in Hebrew).

citizens; 77% believed that consequential decisions about the state require a Jewish majority; less than one-third (31 percent) supported the inclusion of Arab parties in the government; and over half the public (57 percent) believed that the government should encourage the emigration of Palestinian citizens.⁸⁴

In 2004, the Israel Democracy Institute carried out an opinion poll among Jewish youth in Israel. The results showed that less than one-third of young Jews oppose the policy of encouraging Palestinian citizens to emigrate from Israel; 71 percent of Jewish youth believe that a Jewish majority must be secured for consequential decisions; only 46 percent support full equality of rights between Palestinian citizens and Jews; and just 28 percent support the idea of Arab political parties joining the government (including Arab ministers).⁸⁵

A survey by the Center for National Security Research at Haifa University on the subject of political extremism revealed that 64 percent of Jews believe that Israel should encourage Palestinian citizens to emigrate; 55 percent of Jews believe that Palestinian citizens endanger state security; and 49 percent believe that Palestinian citizens are treated too sympathetically by the government.⁸⁶

A poll carried out in mid-March 2005 by the Dahaf Institute, under the direction of Dr. Mina Tzemah, showed that 42 percent of Jews agree with the state's encouraging Palestinian citizens to emigrate; 17 percent are inclined to agree; and only 40 percent are opposed or inclined to oppose this.⁸⁷

“Arab-Free” Jewish Communities

One of the manifestations of racism against the Palestinian minority in Israel, which has become increasingly common in recent years, is opposition to Jews and Arabs living together or to the presence of Palestinian Arabs in “Jewish” communities.

In March 2004, notices were posted in the small town of Migdal, on the coast of the Sea of Galilee. Signed in the name of “The Action Committee for Migdal,” the notices read as follows:

⁸⁴ Israel Democracy Institute, “Israel Democracy Index – 2003” (*President’s Conference – Israeli Democracy in the Test of Time*, May 2003), p. 18 (in Hebrew).

⁸⁵ Israel Democracy Institute, “Israel Democracy Index, Including a Survey on the Opinions of Youth – 2004” (*President’s Conference – Israeli Democracy in the Test of Time*, June 2004), pp. 43-44 (in Hebrew).

⁸⁶ <http://www.ynet.co.il>, June 21, 2004 (in Hebrew).

⁸⁷ *Ha’aretz*, April 4, 2005 (in Hebrew).

“Danger to Migdal and its residents!!! Wake up!!! After destroying the whole country, they now want to take control of Migdal. Recently, we have seen attempts by non-Jewish elements to take control of the town... For the moment, the peace has been maintained... But this peace is temporary. They are just waiting for the right moment to realize their objectives... They learned from us the value of “redeeming the Land.” When will we wake up? When our daughters cannot go outside any more? When our children cannot play in the playgrounds? When apartment prices start to fall? When Migdal becomes a hotbed of nationalist activities? When crime and terror arrive on our doorstep? When church bells ring? When the muezzin’s cry shatters our ears? We mustn’t let it happen. We mustn’t be silent.”

The notices were posted after seven Arab families moved to the small town, joining one family that had lived there for years.

On March 23, 2004, a meeting was held of the town council, attended by members of the Action Committee and residents of the town in order to discuss the “problem”. Rabbi Yigael Mamaliya, the town’s rabbi, said that **“According to the Halacha, it is forbidden to sell a home or land to a Gentile.”** He promised to distribute a leaflet informing residents of this religious ruling. One of the council members commented: **“When the next Gentile festival comes around, we should send invitations to the parents [of the Jewish children] inviting them to celebrate Easter or Id al-Adha. Maybe then they will understand and wake up.”** One resident suggested that **“we take all the children out of the nursery schools and crèches, so that the Arab children will be left on their own, and then their parents will realize that they are not wanted.”** The head of the council, Yossi Gino, said:

“We must address the problem on the national level... I cannot prevent Arab citizens from settling anywhere in the State of Israel, but I have to take account of the residents’ wishes. I will be obliged, within the framework of the law, to act in order to stop this “migration” to Migdal... I welcome the awakening of the residents, since after all we are fortunate to be a mainly right-wing community...”⁸⁸

In July 2004, the newspaper *Yediot Acharonot* published a report on efforts by political activists in Ashkelon to oppose **“the Arab presence in the city.”** The mayor, together with leading activists from the Likud faction, Shinui and Am Echad, came together **“to expel from the city hundreds of Israeli Arab and Bedouin workers who are living and working in the city.”** The

⁸⁸ *Ha’aretz*, April 4, 2005 (in Hebrew).

reference was to Palestinian citizens, employed by building contractors, who were living and working in the city.

The activists are convinced that the Arabs pose a threat to the young women of Ashkelon. The chairperson of the Shinui faction, Leah Maloul, commented at a joint meeting with the activists that:

“I am shocked by this phenomenon. We’re talking about the sexual harassment of young girls by these young minority men. Some cases have reached the police. We must fight against this phenomenon... We must address this phenomenon that girls in Ashkelon are fraternizing with Arabs. We should reach an agreement with the contractors in the city and stop this flood from north and south.”

Pini Sabah, a senior figure in the local Likud party, stated:

“There are presently several hundred Arabs in the city who are employed by contractors... The problem starts in the evening when they go out to enjoy themselves in the marina area and along the beaches. This is a catastrophic problem in sexual terms. That’s why we thought the public must awake. We intend to meet urgently with the association of contractors.”

Responding to the newspaper report, the Municipality of Ashkelon stated:

“Mayor Roni Mahatzri is addressing the phenomenon of the presence of groups from the minority population along with other elements in Ashkelon. An examination of the subject shows that at places of entertainment in Ashkelon, and particularly at Delilah Beach, Bedouins from Rahat and the surrounding area come to enjoy themselves. Moreover, Arabs from the north working with contractors in and around Ashkelon, because of the shortage of manpower, sleep here and also go to places of entertainment. Some Arabs stay here for longer periods of time, and some even rent apartments or sleep in cheap hotels. Accordingly, we decided to contact the commander of Ashkelon police station in order to make preparations regarding the “negative phenomena from the minorities.” Activities of the police and the municipal patrol will give residents of the city a sense of security; we will raise the subject with the advisor to the minister of defense when he visits Ashkelon; we will ask the director of the association of contractors to find alternative solutions for workers; we will ask ministers and other

government officials to find solutions through defense, internal affairs or employment in the building sector.”⁸⁹

During a visit to Nazareth Elite by police commander-in-chief Moshe Karadi, Mayor Menachem Ariav complained that the city was suffering **“nuisances from the Arab neighbors.”** He claimed:

“The first nuisance starts at 4 o’clock in the morning, when our neighbors play the muezzin’s prayer at full volume. Many residents of the city have no choice but to wake up. In the evening, celebrations including shooting take place in the neighboring villages and continue until the small hours of the morning. Hundreds of families whose homes face the villages do not get a chance to sleep.”

Ariav did not hide his concern at the phenomenon of the growing number of Christian families living in the city, claiming that Nazareth Elite was becoming popular with Christian families who wanted to leave (Arab) Nazareth. He ended his comments by noting:

“Personally, I would separate from the Palestinians around me, and not only from the Palestinians over the border.”⁹⁰

Commenting on the same subject on another occasion, council member Avraham Maman expressed opposition to Palestinian citizens living in Nazareth Elite:

“Every day, many Arabs from Nazareth seize apartments offered for sale in Nazareth Elite. There is hardly a street in the city where there aren’t at least 20 or 30 families. The leaders of the city should stop this invasion before the city is no longer Zionist and nationalist... I am not a racist and I have never been one, but many Jewish families are afraid that Arabs will start relationships with their daughters. Regrettably, this has become a phenomenon.”⁹¹

In September 2005, Maman claimed that even if he were forced to sell his house due to heavy debts, he would never compromise by **“selling it to Arabs.”⁹²**

⁸⁹ <http://ynet.co.il>, July 3, 2004 (in Hebrew).

⁹⁰ *Yediot Hagalil*, October 29, 2004 (in Hebrew).

⁹¹ *Yediot Hagalil*, October 22, 2004 (in Hebrew).

⁹² *Kol Ha'emek Vehagalil*, September 16, 2005.

The Policy of the Attorney General

The ruling of the Supreme Court in CA 2831/95 *Rabbi Ido Elba v State of Israel, Piskei Din* 50(3), 221, discusses at length the question of the interpretation of the offense of “the prohibition of the publication of incitement to racism” (Article 144B of the Penal Code). The Supreme Court established the following rules:

- This is a behavioral offense, i.e. the consolidation of the offense is not conditional on the presence of a probable consequence of the incitement to racism;
- The protected social value is to prevent incitement *per se*. The legislative purpose of Article 144B of the Penal Code is not merely to prevent a future threat of racism; rather, the purpose of the prohibition is to prevent the racist statement itself, and to prevent a publication whose purpose is to incite racism. The law does not require the presence of a probable and concrete danger: the danger to society is inherent in the incitement to racism itself;
- Publication of material will constitute the offense of publication of incitement to racism if the publisher was aware of the nature and circumstances of the act and of the possibility that incitement to racism would be caused, and published the material with the goal of inciting to racism;
- The goal of inciting to racism does not have to be the publisher’s dominant and central goal. It is sufficient if it relates to an event that inevitably accompanies the principal goal;
- It is sufficient that the publisher is aware of the content of the publication and of the possibility that the recipient of the publication will be incited to racism;
- In ascertaining whether the publication was made with the goal of inciting racism, it is permissible to consider the content of the publication itself and the circumstances of time and place in which the material was published;
- The incitement to racism must be manifested in the published text;

- The published text, in accordance with its meaning to the listener, must express incitement to racism. The meaning of the text to the listener may derive from its content or from the circumstances surrounding the publication of the text;
- Inciting content may constitute evidence of the goal of incitement.

In light of this ruling and the rules it established, it may clearly be asserted that almost all the racist statements by government ministers, Members of Knesset, public and religious figures against the Palestinian Arab minority and against Muslims, as quoted extensively above in this report, meet the definition of the offense of “incitement to racism” in accordance with Article 144B of the Penal Code. The description of the Palestinian Arab minority as “a time bomb” and “a cancer,” as “the biggest problem” in Israel, as constituting a “demographic threat,” as being “an annex” of the enemy and a potential “fifth column” all meet this definition, as does the description of the Arab Members of Knesset as “sonsofb***hes” and as “wanting to destroy the state,” the description of Muslims as “murderers” and the claim that Islam contains a “genetic defect,” and the description of Arabs as “worms” for whom murdering Jews is “embedded” in their blood; the call to expel the Palestinian Arab minority from the state or to implement “voluntary” transfer; the chants “Death to Arabs,” “Achi Nazareth are terrorists, I hate all the Arabs. We’re gonna get a coffin ready for the Achi Natzeret fans – a coffin for all the terrorists;” the call to beat Arabs with “sticks” and to murder Arabs on the mere suspicion that they are “terrorists.” Almost all these descriptions and exclamations are tantamount to the “persecution, humiliation, degradation, manifestation of hatred, hostility or violence, or the harming of a public or of sections of the population” out of national-ethnic motives (the definition of racism in Article 144A of the Penal Code),⁹³ and they were stated with the goal of inciting to racism. In some cases, the statements even constitute “incitement to violence” (Article 144D2 of the Penal Code).

However, the Attorney General, the head of the prosecution service and the official responsible for applying these legal provisions, has **never** filed indictments against any person on account of such racist statements. Responding to the statements by MKs Zeev Baum and Yechiel Hazan, for example, Attorney General Menny Mazuz decided not to instigate a criminal investigation since, in his opinion, after “examining the totality of pertinent considerations,” he had formed the conclusion that this was a “borderline” case, and it was doubtful whether a criminal proceeding was the appropriate tool for dealing with these statements. He referred the case to the Knesset

⁹³ In the ruling in *Alba v State of Israel*, on p. 256, the Supreme Court established that the definition of “racism” is sufficiently broad to include discriminatory attitudes by Jews toward Arabs, since although the two peoples share the same racial affiliation, their national-ethnic origins are distinct.

Ethics Committee, which he claimed was “the most appropriate framework for addressing these types of statements.”⁹⁴

In the case of the statements by MK Avigdor Lieberman, and responding to a complaint submitted by the newspaper *Kul al-`Arab*, Attorney Shai Nitzan, Assistant for Special Functions in the State Attorney’s Office, replied that the complaint had been examined by Attorney General Manny Mazuz and by State Attorney Eran Shendar. It was found that there were no grounds for instigating an investigation against Lieberman on account of incitement to racism, although Lieberman’s statements were dangerous. Nitzan explained that the idea of transfer was morally repugnant, but that it should be addressed in the public realm (rather than the legal realm).⁹⁵

Regarding the statements by Minister Efi Eitam, Attorney Raz Nazari, Assistant to the Attorney General, replied on June 20, 2002, to a request to instigate an investigation against the minister on suspicion of incitement to racism. Nazari stated: “The Attorney General reiterated that this is an ridiculous and morally defective idea. At present, however, the dominant aspect for addressing this subject is the public sphere, and [Lieberman] will surely be subjected to judgment by the public.”⁹⁶

On the same date, Attorney Nazari also informed MK Ofir Pines (Labor) that, regarding the idea of “transfer” in general, the opinion of the Attorney General, after a discussion of the matter with the State Attorney’s Office and senior officials from the Ministry of Justice, was that this is “a ridiculous and morally defective idea. At present, however, the dominant aspect for addressing this subject is the public sphere.”

As for the statement by Minister Tzahi Hanegbi, on November 26, 2003, Talia Sasson, director of the Department of Special Functions in the State Attorney’s Office, announced that there would be no investigation against the minister on suspicion of incitement to violence. “After examining the matter, it was decided, with the agreement of the Attorney General, the State Attorney and myself [Talia Sasson], not to instigate criminal proceedings against Minister Hanegbi, although the comments were outrageous and we utterly repudiate them. This decision is also consonant with the restrained policy of the prosecution regarding offenses that erode freedom of expression.”⁹⁷

We know of only two cases in which a decision has been made to investigate (and, in one case, to prosecute the alleged offender), although even

⁹⁴ Yuval Yoez and Yair Ettinger, “Mazuz: MKs Baum and Hazan Will Not Be Investigated for Comments about ‘Murderous Arabs,’” *Ha’aretz*, August 10, 2004 (in Hebrew).

⁹⁵ *Kul al-`Arab*, December 3, 2004 (in Arabic).

⁹⁶ Report of Mossawa, the Advocacy Center for Arab Citizens of Israel: *Racism in Israel, 2004* (in Hebrew).

⁹⁷ Mossawa report (Note 96 above).

in these cases no statement of indictment has been served to date. The first case concerns Dr. Bukai: according to press reports, Attorney Shai Nitzan forwarded an instruction to the Israel Police in March 2005 to instigate an investigation against Dr. Bukai on suspicion of incitement to racism due to some of his statements.⁹⁸ To date, no decision has been made in this case.

The second case concerns Rabbi Eliahu. In reaction to his comments, the Israel Religious Action Center (IRAC) of the Israel Movement for Progressive Judaism contacted the Attorney General several (six) times asking that the rabbi be questioned and prosecuted for his statements. The first request was submitted on August 13, 2002 and the last on September 17, 2004. In one of the replies from the Attorney General's Office (dated October 22, 2003) relating to the rabbi's demand that Arab students be removed from the college in Safed, it was announced that "the Attorney General has decided to prosecute Rabbi Shmuel Eliahu subject to a hearing." Other letters from the Attorney General stated that it had been decided to instigate an investigation relating to other statements. To date, however – three years after the submission of the first complaint, and one year and nine months after it was decided to prosecute Rabbi Eliahu – no statement of indictment has yet been filed against the rabbi relating to any of his statements, despite the Attorney General's decision. IRAC eventually decided (on July 11, 2005) to file a petition at the Supreme Court against the Attorney General for his failure to prosecute Rabbi Eliahu.⁹⁹ The petition is currently pending.

Regarding the remaining statements, and to the best of our knowledge, the police have not instigated investigations against those responsible and neither has the State Attorney's Office filed indictments.

The Attorney General quotes freedom of expression as the excuse for his policy. For example, in an article published in the legal journal *Hapraklit*,¹⁰⁰ former Attorney General Eliyakim Rubinstein¹⁰¹ clarified the guidelines relating to the work of the prosecution system he headed relating to law enforcement in offenses of incitement to violence and incitement to racism:

- A central principle guiding the actions of the prosecution is strict attention to protecting and strengthening the principle of freedom of expression, since in Israeli law freedom of expression is recognized as a right of special value and importance;

⁹⁸ David Rattner, "Police to Investigate Haifa University Lecturer on Suspicion of Racial Incitement against Arabs," *Ha'aretz*, March 15, 2005 (in Hebrew).

⁹⁹ HCJ 6702/05 *Israel Religious Action Center – Israel Movement for Progressive Judaism v Attorney General* (pending). The review of the sequence of events in the case of Rabbi Eliahu is taken from the petition.

¹⁰⁰ Elikim Rubinstein, "On Freedom of Expression and the Prosecution Policy in Offenses of Incitement to Violence," *Hapraklit* 44 (Booklet A), 5 (in Hebrew).

¹⁰¹ Rubinstein now serves as a Supreme Court justice.

- The criminal law cannot provide a solution for all the ills of Israeli society, since, in most cases, the criminal law is not the most desirable or effective solution;
- There are exceptions to the general restraint in the use of criminal law in the field of freedom of expression, but great caution must be exercised in investigations and prosecutions on account of these offenses, since the authorities must be extremely careful not to confuse criticism and incitement.

Elsewhere, the former Attorney General clarified that, as a general rule, the prosecution's policy is extremely restrained in this type of offense, due to recognition of the importance of the principle of freedom of expression.¹⁰² However, the Attorney General's approach is inconsonant with Article 4 of ICERD and with the goals behind the provisions in the Penal Code relating to racist incitement. According to international law, the right to freedom of expression is relative, not absolute, and it may be infringed, to a certain extent, in order to defend other, no less important rights, such as the right to reputation and the right of individuals or groups not to be exposed to racist statements or incitement. This is also the spirit of Article 4: that freedom of expression and freedom of association should not be granted superiority over the right to reputation and the right not to be exposed to racial discrimination or incitement, and it was on this basis that the article was drafted and included in the convention.¹⁰³

Even in Israeli law, freedom of expression, despite its elevated status, is a relative rather than an absolute right. In the ruling in *Elba v State of Israel*, the President of the Supreme Court, Justice Aharon Barak,¹⁰⁴ clarified that it is possible to impair freedom of expression in the context of a racist statement, since the infringement of freedom of expression for the purpose of preventing racism constitutes a proper purpose. Justice Eliahu Matza writes in the same ruling that racist statement is not included in the forms of expression to which a free society is obliged to reconcile itself, and, accordingly, the gates of freedom of expression are closed to it.¹⁰⁵ In the ruling in *Lerner v State of Israel*,¹⁰⁶ the Jerusalem District Court writes (p. 434):

"We concur with the Appellant that freedom of expression is indeed a supreme value, and, as such, patience and tolerance must be shown even toward comments that are outrageous

¹⁰² Eliyakim Rubinstein, "The State and the Israeli Arabs: The Struggle for Equality within a Jewish, Democratic and Anguished State," *Kiryat Hamishpat* (annual of the Academic Campus 3), 107, pp. 113, 114 (in Hebrew).

¹⁰³ For more extensive discussion of this aspect, see Chapter Three above.

¹⁰⁴ On pp. 296- 297.

¹⁰⁵ *Ibid.*, pp. 267-268.

¹⁰⁶ CA (Jerusalem) 1517/98, *Tak-Meh* 98(3), 431.

and uncomfortable to hear and absorb. This freedom is not, however, without limit. Freedom of expression, notwithstanding its lofty status, is not absolute liberty to say anything a person wishes, and it is not infrequently restricted, albeit only in the minimum measure required, in order to protect other vital interests. One of these interests is the public interest in preventing incitement to racism, and it was for this purpose that Article 144B of the Penal Code was enacted. The restriction on freedom of expression included in this article seeks to create a proper balance between freedom of expression and protection of society and the members of society from the dissemination of the virus of racism, whose cost was seen by humanity, and particularly by the Jewish people, not so long ago. The considerations of balance should include, inter alia, the evil and danger of the publication inciting to racism as opposed to the danger of the infringement of freedom of expression. This balance is performed by a court that sits among its people, weighing factors, facts and considerations of different types."

In his book *The Constitutional Law of the State of Israel*,¹⁰⁷ legal expert Professor Amnon Rubinstein states that protection of a person's right to a reputation does not impair the status of the right to freedom of expression. He explains that, in accordance with the rulings of the Supreme Court, these two rights must be balanced in each case, **without granting a priori preference to either one**. Indeed, former Attorney General Eliyakim Rubinstein himself wrote that "reputation" has a high status and, in order to protect it, even freedom of expression may be restricted.¹⁰⁸

In enacting the provisions in the Penal Code relating to incitement to racism, the Israeli legislature expressed its clear opinion that the interest of preventing racial incitement outweighs the interest of protecting freedom of expression.¹⁰⁹ Accordingly, in adopting a position that mandates restraint in offenses of incitement to racism, in preferring the consideration of freedom of expression over other considerations, and in refraining from prosecuting Jewish public figures who have made racist statements against the Palestinian Arab minority, the Attorney General is not only contravening Israel's undertaking in accordance with ICERD, and hence infringing international law, but is also

¹⁰⁷ Vol. B, p. 1064 (in the section on "The Right to Reputation") (in Hebrew).

¹⁰⁸ Eliyakim Rubinstein, "Defamation – The Ongoing Struggle for the Dignity and Reputation of One's Fellow," at the following Internet address:
<http://www.nfc.co.il/showArticles.asp?subjectId=3&DocId=183> (in Hebrew).

¹⁰⁹ David Kretzmer, *Racial Incitement in Israel*, Israel Yearbook on Human Rights, Vol. 22, pp. 243, 255.

promoting policy that contradicts the intention of the Israeli legislature, and hence also infringing domestic Israeli law.

Moreover, the Attorney General, in adopting such policy, has failed to take into consideration the established norms and rulings of the Supreme Court relating to the subject of racist statements against the Palestinian Arab minority in Israel. For example, in SA 1/88 *Neiman v Chairman of the Central Election Committee for the Twelfth Knesset*, *Piskei Din* 42(4), 177, the Supreme Court ruled that the Kach list was disqualified from participating in the Knesset elections since “its publications, speeches, proposals and actions are tantamount both to **incitement to racism** and to the denial of the democratic character of the state,” as stated in Article 7A of the Basic Law: The Knesset.¹¹⁰ The Kach list, headed by Rabbi Meir Kahane, had been disqualified due to its racist platform which advocated the transfer of the Palestinian Arab minority. Thus the Supreme Court took the view that a person who advocates the “transfer” of the Palestinian Arab minority is effectively inciting to racism, and should therefore be prosecuted for the offense of “incitement to racism” in accordance with Article 144 of the Penal Code. It is therefore unclear why the Attorney General chooses to ignore this ruling and to refrain from prosecuting public figures who make statements and express opinions explicitly and clearly calling for a policy of transfer against the Palestinian Arab minority.

The same applies to statements relating to “Jewish-only” communities. In the ruling in CAP 6709/98 *Attorney General v Moledet-Gesher-Tzomet List for the Local Elections in Nazareth-Elite*, *Piskei Din* 53(1), 351, the Supreme Court negated the right of a political list to compete in municipality elections due to its racist platform, which advocated discrimination against Palestinian citizens in housing the city and, among other demands, called for Arabs to be removed from a specific neighborhood. The Moledet-Gesher-Tzomet List's racist platform called for “a change in priorities regarding new arrivals in the city. Every Jewish family that settles in Nazareth Elite will be entitled to benefits... The transformation of the city into non-Jewish must be halted by legal means... We will stop the Arab takeover of Nazareth Elite... We will make it unequivocally clear that Arabs have no reason to be in Ben Gurion neighborhood.” These demands were found in the ruling to constitute indisputable incitement to racism. Accordingly, it is unclear why the Attorney General has refrained from indicting those who explicitly advocate the “expulsion” of Palestinian citizens from Jewish communities, despite the fact that it was the Attorney General himself who filed the appeal in the Supreme Court that led to the disqualification of the Moledet-Gesher-Tzomet list in Nazareth Elite!

¹¹⁰ The accepted opinion among jurists is that the term “incitement to racism” in the Basic Law: The Knesset, and in Article 144 of the Penal Code is to be interpreted identically: Talia Einhorn (Note 5 above), p. 50;

Moreover, an examination of the Attorney General's decisions relating to the filing of indictments on account of offenses of incitement to racism against the Palestinian minority raises concern that the policy is arbitrary and inconsistent. In June 2003, then Attorney General Eliyakim Rubinstein decided to indict Rabbi Yitzhak Ginzburg, formerly the head of the "Od Yosef Chai" Yeshiva in Nablus, on account of offenses of incitement to racism. This decision followed racist statements published in Ginzburg's name in a book entitled "Needed Now: Radical Treatment," based on an interview with him. Among his comments: "Arabs have no right to exist in this land, and the Arab people are extremely low on the scale of world culture"; "The Arabs have a dissolute character." He also called the Arabs "a cancer."¹¹¹ The reader will be struck by the similarity between these comments and other comments of public figures as quoted above, such as the comment of Minister Efi Eitam that the Palestinian minority resembles "a cancer" in Israel. Accordingly, the question is stark: why did the Attorney General decide to file an indictment in the one case,¹¹² while not doing so in the other, despite the similarity between the statements?

A similar situation may be seen regarding the demand for the "expulsion" of Arabs. In a ruling of the Magistrate's Court in Kfar Sava in CF (KS) 2110/03 *State of Israel v Paniri Chaim and Shariki Yair* (unpublished), the court convicted two defendants who sprayed graffiti on buildings with the "Kahane was right" and "Expel the Arabs" slogans of racial incitement, since, the court argued, these statements constituted "the persecution, humiliation, degradation, manifestation of hatred, hostility or violence, or causing harm to a public – viz., the Arab public in Israel – due to their ethnic origin, and hence it embodies clear racism." However, public figures such as MK Michael Ratzon, who have also called for the expulsion of the Arab minority from Israel, have not been indicted, despite the opinion of then Attorney General Eliyakim Rubinstein that this statement should be investigated.¹¹³

In addition to the provisions of the Penal Code relating to incitement to racism, the Israeli legislature has provided the Attorney General with an

¹¹¹ <http://www.ynet.co.il>, June 2, 2003 (in Hebrew). An indictment was indeed filed against the rabbi (CP (Jerusalem) 3297/03), but an arrangement was ultimately reached between the prosecution and the rabbi whereby he rescinded the phrasing of his comments and expressed regret that they implied incitement to racism against Arabs *per se*, and undertook to refrain in the future from any statement contrary to the law, including statements liable to imply racial incitement. In return, the prosecution withdrew the indictment. A petition was filed to the Supreme Court against the withdrawal of the prosecution (HCJ 5584/04 *Moshe Frankfurter et al v Attorney General* (unpublished)), but it was rejected.

¹¹² The fact that the indictment of Rabbi Ginzburg was ultimately canceled does not diminish from the importance of the decision by the Attorney General to prosecute him on account of his racist statements.

¹¹³ Eliyakim Rubinstein (note 102 above), p. 112. Rubinstein even notes that he himself filed a complaint with the police against right-wing demonstrators outside the Prime Minister's Office who called for the expulsion of Arabs.

addition tool for combating racist incitement: Article 4 of the Prohibition of Defamation Law.¹¹⁴ This article grants protection against the defamation of groups and permits the Attorney General to prosecute and penalize a person who makes racist statements against a particular group in society.¹¹⁵ The use of Article 4 of this law is, indeed, easier than the use of Article 144B of the Penal Code, due to the stricter demand in Article 144B to prove the “goal” of inciting to racism. However, the consistent policy of Attorney Generals has rendered Article 4 a dead letter: since the enactment of the Prohibition of Defamation Law, this article has never been used,¹¹⁶ despite the fact that it is an appropriate tool to prosecute those employing racist incitement against disempowered minorities.

¹¹⁴ See Chapter Four above.

¹¹⁵ In HCJ 399/85 *Kahane v Israel Broadcasting Authority*, *Piskei Din* 41(3), 244, Justice Gavriel noted that “incitement to racism” could be considered a form of group libel.

¹¹⁶ Eliyakim Rubinstein (note 108 above).

Conclusions

The terror attack against Palestinian citizens on August 4, 2005 was a despicable act committed by a vile murderer who killed innocent people based on racial motives. As such, this was a distinct and isolated incident in terms of the attitude of the Jewish majority toward the Arab minority. However, this attack also forms an additional link in the chain of verbal and physical attacks by the majority against the minority population.

In the events of October 2000, the Israeli Police killed twelve Palestinian Arab citizens of Israel and one Palestinian citizen of the Occupied Territories, although the police were not in mortal danger. These events constituted a dramatic worsening of the behavior of the Jewish majority toward the Palestinian minority, on the basis of the perception that the police were acting on behalf of the Jewish majority.

Given the tragic outcomes of the events of October 2000 and the recommendations of the Or Commission, a serious change in the attitude of the Jewish majority toward the Palestinian minority might have been expected. However, the reality was very different. Chapter Five of this report reveals the attitude of the Jewish majority toward the Palestinian minority following the events of October 2000. As we have seen, racist attitudes toward the minority have become ingrained among the majority population. The Jewish majority sees the Palestinian minority as security and demographic threats to the state, and sees expulsion as a solution.

These attitudes have not remained solely on ideological or declarative levels, but also manifested themselves in violent behavior and actions. During the years following the incidents of October 2000, the HRA has documented numerous cases of police violence against Palestinian citizens. A report prepared by the HRA on this subject¹¹⁷ included detailed descriptions of four cases in which Palestinian citizens were beaten and abused by the police. The conclusion reached by the report was that not only has there not been any improvement in the attitude of the police toward the Palestinian minority since

¹¹⁷ *Four Years On – Cases of Police Brutality against Palestinian Arab Citizens of Israel during the Year Following the Or Commission Report on the October 2000 Events* (September 2004).

the events and the publication of the Or report,¹¹⁸ but that this attitude had in fact become more racist, hostile and aggressive. Moreover, since the events of October 2000, the media have reported 18 cases in which Palestinian citizens have been **killed** by the police.¹¹⁹

A report prepared by the HRA on the subject of the attitude of the state toward Arab Members of Knesset¹²⁰ found that these public representatives have been beaten with batons by members of the security forces while participating in demonstrations or protests in the framework of their functions. The use of violence has sometimes included rubber bullets, and several Members of Knesset have required medical treatment.

In addition to police violence, the media have documented numerous cases since October 2000 of the use of violence by Jewish citizens against Palestinian citizens. The HRA has documented several such cases, which are detailed in Appendix B to this report.

An examination of the background to these cases of violence against the Palestinian minority, both by authorities of the state (police and security forces) and by Jewish citizens, shows beyond all doubt that they were perpetrated on nationalist and racist grounds. The physical attacks on Palestinian citizens took place because of their affiliation to the Palestinian minority in Israel and were rooted in racist attitudes toward this minority.

It is against this background that the terrorist attack against Palestinian citizens of Israel should be examined. After all, the terrorist was a settler from Tapuach in the West Bank, and his decision to murder Arabs was made against the background of the IDF “withdrawal” from the Gaza Strip. His decision to murder Palestinian citizens of Israel was made in the context of the process of dehumanization of these citizens, as described above, which legitimized attacks against them. The message conveyed by this process, and received by the terrorist, was that the Palestinian Arabs are a minority that pose a security and demographic threat to the state; the implication is that this minority therefore forfeits their rights and may be attacked with impunity.

The terror attack thus constitutes one link in a chain of verbal and physical attacks against the Palestinian minority – a chain that began with racist incitement, moved on to racist actions and physical violence, and terminated in the murderous attack.

¹¹⁸ The Or Commission examined the behavior of the police in its report, stating that it had found phenomena of negative stereotypes toward this population, whom the police perceived as the “enemy” (*Or Commission Report*, Section Six, para. 14-15).

¹¹⁹ <http://www.mahsom.com>, September 18, 2005 (in Hebrew).

¹²⁰ *Silencing Dissent – A Report on the Violation of Political Rights of the Arab Parties in Israel* (October 2002).

The prosecution system, headed by the Attorney General, made an indirect but significant contribution to legitimizing physical attacks against members of the Palestinian minority. Israeli law provides the Attorney General with effective tools for combating all manifestations of racism, including verbal manifestations. However, we have seen that the Attorney General has refrained from using these tools in response to verbal manifestations of racism by the Jewish majority against the Palestinian minority, or, at the very least, has used them in a selective, arbitrary and inconsistent manner. Accordingly, he has failed to meet his legal obligation and has infringed international law, which requires states to combat racism, including by means of criminal prosecution.

The perception of international law regarding the protection of minorities is that the domestic courts are responsible for protecting minorities living within that state from the possible defects of the political process which may injure minority communities or individuals. This perception also applies in terms of determining the limits of statements of racial incitement, when the member of one group (the majority) uses an offensive or racist expression against a member of the other group (the minority).¹²¹ In this context, the responsibility rests not only with the courts, but also with the Attorney General, who is empowered to bring cases of incitement to racism before the courts. The practical outcome of the decisions of the Attorney General relating to racist statements against the Palestinian Arab minority is to remove the responsibility from the courts and impose it on the Attorney General himself. In so doing, the Attorney General is injuring the democratic process and denying the Palestinian minority the possibility of securing protection from the courts against manifestations of incitement to racism leveled against it by the Jewish majority.

As noted, racism against the Palestinian minority is not a new phenomenon, but has been present within Israeli society since the establishment of the state. However, there can be no doubt that there has been a dramatic exacerbation in the situation since the events of October 2000. While in the past the Attorney General adopted a policy of restraint in prosecuting Jewish citizens who incite to violence against the Palestinian minority, in the wake of the events of October 2000 and the recommendations of the Or Commission,¹²² it might have been expected that this policy would change. A Supreme Court justice commented in this regard:

"Something that was not perceived in the past as creating the almost certain danger of causing actual harm may be

¹²¹ E. Benvenisti, "Protection of Minority Communities in the Courts," *Alei Mishpat C* (5764), 463, pp. 472, 474 (in Hebrew).

¹²² which determined that one of the numerous reasons for the tragic outcome of the murder of 13 people was the racist attitudes of the Jewish majority toward the Palestinian minority. *Or Commission Report*, Chapter One, para. 66.

perceived in the present as creating such a danger, due to a change in the circumstances of life. Circumstances change. A new reality emerges, and with it the probability of the almost certain occurrence of a danger".¹²³

Indeed, the concept of a change in policy following changed circumstances is not alien to Attorney Generals. Following the assassination of Prime Minister Yitzhak Rabin in 1995, it was argued that the incitement by right-wing circles to use violence against the Prime Minister following the signing of the Oslo Accords, combined with the policy of the Attorney General to show restraint in applying the criminal law, led to the assassination. The entire legal system, including the Attorney General, subsequently changed its policy relating to the application of criminal law in combating incitement to violence and racism. A more forceful approach was seen in indicting right-wing figures who continued their incitement against the Prime Minister and his supporters.¹²⁴

The same approach should apply regarding incitement to racism against the Palestinian minority by the Jewish majority. Following the events of October 2000, the Attorney General should have appreciated the connection between the incitement that preceded these events and the events themselves, and should have used the tools available to him more forcefully in order to prevent the recurrence of such events. It would seem, however, that the Attorney General did not learn that lesson and so did not change his policy following these events. This was interpreted as a “green light” for even more ferocious incitement against the minority, culminating in the appalling terror attack. In practical terms, the policy of the Attorney General means that a person can make racist statements against the Palestinian minority without fear of being prosecuted.

The decision of the Attorney General to provide full backing for the decision of the Police Investigation Department not to prosecute police personnel involved in murder during the events of October 2000¹²⁵ is a direct continuation of this approach. The practical significance of this decision is that it is permissible to kill Palestinian citizens without justification, with no fear that those responsible will have to pay the price.

The Supreme Court, in its ruling in HAD 1789/98 *State of Israel v Benjamin Kahane*, *Piskei Din* 50(5), 145, discussed the interpretation of the phrase “arousing hatred and hostility among different sections of the population” as

¹²³ Justice Tirkal in the ruling of the Supreme Court in CA 2831/95 *Rabbi Ido Alba v State of Israel*, *Piskei Din* 50(3), 221, p. 331.

¹²⁴ E. Benvenisti, “Regulating Freedom of Expression in a Polarized Society,” *Mishpatim* 30 (5759) 29, pp. 46-51 (in Hebrew).

¹²⁵ *Mazuz: Indictments Will Not Be Served Merely to Satisfy a Particular Public*, *Ha'aretz*, September 22, 2005 (in Hebrew).

appears in the definition of the offense of “revolt” (Article 136(4) of the Penal Code). In paras. 21 and 22, the court writes:

"It seems to me that the underlying value of this alternative is to protect the ability of different sections of the population in the country to live alongside one another in peace and security, a value we shall refer to hereinafter as: social cohesion. The purpose of this value is to protect the possibility of groups within the population that differ in various and diverse ways to live together under the roof of a single state. Incitement directed against a population group against a racist or ideological background, fueling hatred against this group and calling for the adoption against it, as a group, of violence, constitutes an injury to that value of social cohesion as defined. Such incitement causes social polarization based on hatred and violence. In extreme circumstances, such incitement may completely dissolve the minimum “glue” that connects the different sections of the population, preventing the possibility of joint life in the same country.

The value of “social cohesion” as defined is of particular importance against the background of a society with a diverse social mosaic, such as the State of Israel, where minorities, members of different religious communities, live side by side, and the difference between population groups living in proximity is considerable. Its value lies in maintaining the existence of a multi-cultural and pluralistic society, and in preventing the dissolution of the social fabric. It should be emphasized that maintaining and advancing this value is not the exclusive, or even the natural, preserve of criminal law. The task of imposing tolerance, love and neighborliness between individuals clearly rests with the educational and social systems, which should act constantly to nurture and inculcate these values in society. However, criminal law can also make a contribution in this matter. Criminal law may constitute a tool for addressing the polarizing, sinister potential that is inherent in a society with a heterogeneous social structure. In this context, its function is to address behaviors that sow hatred and violence between different sections of the population, and seek to undermine the delicate fabric of relations between different population groups.

These improper behaviors may, in certain circumstances, take the form of verbal statements which, given their content and circumstances, are liable to injure the said social

cohesion. The power and force of words should not be underestimated. Words can fuel emotions and hatred, leading to violence and thus undermining the minimum cohesion of a society".

These are powerful words indeed, and ones that are corroborated by the experience of the Palestinian minority in recent years. Since the events of 2000, the Palestinian minority has been subjected to vicious and gross racist incitement by the Jewish majority, and the authorities of state have not taken active steps to stop this incitement. This incitement has gradually moved on from the verbal sphere to take the form of racist actions, and ultimately – the use of violence. The terror attack in Shefa'amr against Palestinian citizens constitutes the natural and expected outcome of this incitement, and a further exacerbation in the negative attitude of the Jewish majority toward the Palestinian minority.

Recommendations

In light of the conclusions reached by this report, the HRA recommends as follows:

To the Attorney General

- The Attorney General should change his policy and take forceful steps in all matters relating to the application of the provisions in criminal law enabling prosecution on account of racist statements against the Palestinian minority;

To the Government

- The government should change its policy toward the Palestinian minority, stop the process of dehumanization that has been instigated against this minority, and combat the scourge of racism that has spread throughout Israeli society, using all means required, in the spirit of Article 2 of ICERD. The HRA urges the government to establish an official body charged with combating racism in all its forms and manifestations, including by means of education to tolerance and to recognition of the rights of the Palestinian minority;
- The government should revoke the racist laws passed by the Knesset and, in the future, prevent the possibility of other racist legislation being passed or proposed;
- The government should announce a national emergency plan to combat racism; should implement this plan in accordance with a clear timetable; and should provide all the resources necessary to implement this task;
- The government should announce that it is choosing to apply Article 14 of ICERD, and will enable its citizens to file individual complaints to the Committee for the Elimination of Racial Discrimination on account of violations of the Convention.

The Terror Attack in Shefa'amr

Details of the Attack

On August 3, 2005, at 17:05, the terrorist Nathan-Zadeh boarded Egged bus 165 from the Checkpost bus station in Haifa to Shefa'amr via the "Krayot" area. Nathan-Zadeh, aged 19, a soldier absent without leave from the IDF, was originally from Rishon Lezion. He had recently become an observant Jew, had close links with activists in the Kach movement, and was living in the settlement of Tapuach in the West Bank. The terrorist pretended to be asleep until the bus entered Shefa'amr. The bus driver, the late Michel Bahouth (aged 56, hereinafter "Michel") turned to the terrorist and pointed out that he was in Shefa'amr. He reassured him and told him not to worry, and said that he would make sure that he got back to Haifa. Evidently Michel assumed that the terrorist had fallen asleep and had missed his stop before the bus reached Shefa'amr. Later, Michel and the terrorist returned to Haifa in an Egged vehicle.

The next day, August 4, 2005, the terrorist boarded the same bus line at the same time. He sat on the back seat, on the right-hand side, and was carrying his army weapon (an M-16 rifle) and a bag. There were other passengers on the bus, both Jews and Arabs. Michel spoke to the terrorist and warned him not to fall asleep again, and to make sure he got off before the bus reached Shefa'amr. However, as the bus reached Shefa'amr the terrorist was still on board. Michel asked the passengers to tell the terrorist to come and speak to him, but it seems that he did not do so and did not speak to Michel.

In any case, the bus continued along its route. At about 17:30, when the bus reached the Marshan neighborhood (the Druze neighborhood of Shefa'amr) and stopped to let a passenger off, the terrorist got up from his seat and walked toward the driver. He stood by the steps, drew his weapon and fired a volley of shots at Michel's head. Michel was killed instantly and his head fell forward onto the steering wheel. The terrorist then turned to a Nader Haik, a man who was sitting behind Michel, and fired another volley at him. He then turned on two sisters who were sitting in the front seat on the right-hand side, Hazar (23) and Dina (21) Turki, and fired another volley at them. Michel, Nadar and Hazar all died immediately. Dina was unconscious for some time, but later died of her wounds.

The bus continued to move on slowly for several meters, and hit a Mercedes and a lamp post before finally coming to a halt. In the meantime, the terrorist continued to shoot randomly at the other passengers in the bus, who were hiding behind the seats in front of them, and later attempting to escape through the back door, which was open¹²⁶. The terrorist also aimed his weapon at people who had gathered outside. Two passengers were shot as they attempted to escape from the bus: Vivienne Gamal (22) was hit behind the ear (the bullet entered via the rear of her ear and existed through her cheek), and Sabri Muhsan (35) was shot in the hand. The terrorist continued to fire, and found one of the passengers, L., hiding in her seat (which was behind the Turki sisters). He aimed his weapon at her head and pulled the trigger, but no shot was fired, probably because the ammunition had run out. L. took advantage of this and jumped on the terrorist, seizing the barrel of his gun and pushing him. At the same time, another passenger, Ha'il Janhawi (28) also jumped on the terrorist, seized the barrel and began to struggle with him. He eventually managed to hold the terrorist down on a seat with his weapon pressed against his chest, holding him down with both hands. The remaining passengers got off the bus. At this point, when it was quiet and there was no more shooting, other people entered the bus, handcuffed the terrorist and dragged him to the back of the bus. One of them asked the terrorist: "Do you know what you have done?" He replied calmly: "I came to kill Arabs."¹²⁷

In the meantime, police officers entered the bus. Local residents gathered outside, entered the bus and beat the terrorist to death; his body was then removed by the police. Four people were murdered in the attack and 12 were injured by the shooting.

Press reports revealed that a series of failures prevented the security forces from identifying in time the threat posed by the terrorist. A report by Ha'aretz found that both the IDF and the GSS had prior information, including warnings from the terrorist's family, suggesting that he might be dangerous and could use the personal weapon he took with him when he went absent from the army.¹²⁸ A debriefing by the GSS revealed an "error in judgment" on its part in failing to recommend that the terrorist not be drafted to the IDF, given his contacts with Kach activists. GSS chief Yuval Diskin even commented that the GSS had failed in preventing the terror attack.¹²⁹

¹²⁶ The back door is located midway along the bus.

¹²⁷ From the testimony of Nakad Nakad (see below).

¹²⁸ *Ha'aretz*, August 7, 2005 (in Hebrew).

¹²⁹ *Ha'aretz*, September 22, 2005 (in Hebrew).

Testimonies

Testimony of Sabri Muhsan, ID 027599430, aged 35, Shefa'amr

On August 4, 2005, as I do everyday, I was returning from work in the Checkpost area of Haifa to my home in Shefa'amr. I boarded bus 165 at about 17:05. A soldier whom I had seen on the same bus at the same time the previous day also boarded with me (I recall that the day before the attack, I got off the bus in the center of Shefa'amr, looked back and saw that the soldier was still sitting there).

I sat two seats up from the back door, while the soldier sat at the very back of the bus, towards the left. When he got on the bus, the driver told him not to fall asleep as he had done the previous day, and said that when they got to Kiriyat Ata, he would remind him to get off.

When we reached Kiriyat Ata, all the Jewish passengers got off the bus, and the driver reminded the soldier to get off, but he did not do so, and made a sign to the driver to keep on driving.

All this time, I was suspicious that this man was going to do something. When we reached the Marshan neighborhood of Shefa'amr, someone rang the bell. At that moment, the soldier got up from his seat and began to walk down the bus towards the driver. He stopped at the steps by the front door, his back to the passengers.

The bus stopped and the driver opened the doors. At this moment, the soldier raised his weapon, aimed at the driver and fired a volley of shots. The driver fell down onto the steering wheel. Then he shot a man who was sitting immediately behind the driver, and went on to shoot two young women who were sitting at the very front, towards the right. The bus continued to move slowly.

I was in shock. After he stopped shooting, I got over my shock and realized what he had done. I wanted to jump on him, but at that moment I heard him load the second magazine and realized that there was not time. He was few meters away from me. I decided to do something and take a risk and escape from the bus, after he had already pointed his gun at me (at the same moment, I saw one young woman, L., hiding under the seat in front of her).

I ran toward the back door, and he shot a volley at me. I immediately felt a burning sensation in my hand and back and for a moment everything seemed dark. Then I came around and got off the bus.

After I got off, I saw people running to the scene and asking what had happened. I answered that a soldier had opened fire on us and the driver was dead. I felt dizzy and sat down on the sidewalk by the bus. I held my hand and kept on saying "the driver was murdered" and asked for an ambulance.

Someone I did not know came up to me and bandaged my hand, and after 5 or 10 minutes the police and ambulances arrived. They took me to an ambulance and drove me to Rambam Hospital [in Haifa].

Testimony of Vivienne Gamal, ID 039965116, aged 22, Shefa'amr

On August 4, 2005, at 17:05, I boarded bus 165 from the central bus station in Haifa (the Checkpost). The bus goes from Haifa to Shefa'amr via the "Krayot." I sat on the last seat before the back door. The bus was full and there were Jewish and Arab citizens.

I noticed that the driver was suspicious of one soldier who was sitting in the bus and he kept looking at him all the time in the mirror. During the journey, the driver talked to other soldiers on the bus and asked them to ask the "suspicious" soldier where he was going. However, I did not hear the soldier speak or approach the driver.

When we arrived in Shefa'amr, the "suspicious" soldier got up and began to walk toward the driver, until he reached the steps by the front door where he stopped, his face toward the driver. One stop before the place where the attack took place, in the Marshan neighborhood, another soldier got off the bus, and there were now no soldiers left apart from him. I had a feeling that the "suspicious" soldier wanted to do something. He did not say a word.

A few meters before the bus stop in the Marshan neighborhood, the bus stopped to let an elderly woman get off. A few seconds later, I saw the soldier draw his weapon and begin to shoot at the driver. I immediately hid under the seat in front of me, so I could not see what happened after that, but I heard more shots. Then I heard a young woman saying the Islamic Shahada, which is said before death: "Ashhad inna la ilaha illa Allah, Muhammadan rasul Allah." I sensed that someone had escaped from this bus, but I did not know who.

Then I said to self that I must also escape, so I got up, bending down, and intended to escape through the back door (I did not look toward the soldier, who was in the front section of the bus). I grabbed onto a pole by the back door, and before I got off the bus I felt a bullet enter behind my ear and come out through my cheek. All my clothes were covered in blood. I was silent, but then I shouted out in fear. At the time I felt as though my ear was not in the right place.

I did not get off the bus immediately. I sat on the last step by the back door and waited for a few moments. I felt that the bus was still moving, but very slowly.

Then when I got off the bus I fell, but I quickly recovered, got up and went to a nearby home. I burst in but I do not remember if I saw anyone there. I went out of the house and saw a woman sitting on the steps. I shouted to her

“Help me!” I took my mobile phone and called my parents, and told them about the incident and that I had been injured.

People who saw me in this condition shouted out. After about half an hour a bus came and took me to Rambam Hospital in Haifa.

Testimony of L.

On August 4, 2005, I got on bus 165 from Haifa to Shefa'amr. When the bus entered Shefa'amr, I became suspicious of one soldier on the bus who had a skullcap on and had ear locks, and I wondered why he had come to Shefa'amr.

I was sitting in the second seat on the right, immediately behind two girls who were sitting at the front.

As soon as we reached the third bus stop in Shefa'amr, in the Druze neighborhood, this soldier went up to the driver and stood on the steps by the front door. He drew his weapon, turned round and looked at the driver, and fired at him at point blank range, hitting him in the head. The soldier kept on shooting, hitting a man who was sitting immediately behind the driver. He also shot in the head the two young women who were sitting in the front seat. Then he went on shooting at random at the other passengers in the bus.

During the shooting, I hid in my place under the seat in front of me. The soldier went on shooting right by me, but presumably he did not notice me. After a moment's quiet, he began looking for other people hiding in the bus and found me. He aimed his gun at me and pulled the trigger but could not fire, because there were no bullets left. He tried to check the weapon.

The barrel of his gun was behind my head. I seized the barrel and struggled with the soldier. Although the barrel was hot, I did not feel any pain at the time. After a few moments, a man by the name of Ha'il Janhawi came and grabbed him, dragged him to the back of the bus and told me to get off.

I ran to the front door, but it was blocked by a Mercedes. So, I ran to the back door, got out and went to a nearby house. I telephoned my parents to tell them what had happened.

An ambulance arrived and took me to Rambam Hospital. I was the last of the injured [to be evacuated]. At Rambam Hospital I saw Ha'il Janhawi. Like me, he had burns on his hands (from holding the hot gun barrel).

Testimony of `Abd al-Nasser Muhsan, ID 029246899, aged 33, Shefa'amr

On August 4, 2005, at 17:05, I got on bus 165, which goes from the central bus station in Haifa to Shefa'amr. A few minutes later, at the second stop at the Checkpost, my brother Sabri and a soldier got on the bus. My brother sat on

the first seat before the bus's back door, and the soldier sat on the last seat to the left. I sat on the seat immediately in front of him. The soldier was carrying a bag; I did not know what was in it. Several people from Shefa'amr whom I know were sitting near me.

When the soldier got on the bus with my brother, the driver asked him where he was going, but he ignored the question and sat down at the back of the bus. When the bus entered Shefa'amr, it stopped at the first stop (Al-'Ain) and then continued and entered the Marshan neighborhood, where it stopped to let an elderly woman get off. After she got off, the soldier began to walk toward the driver. He stood next to him and immediately began to fire a volley of shots at very close range. The young women sitting in the front seat began to shout. He shot at them and shot a man sitting immediately behind the driver. The bus began to move very slowly. In the meantime I hid behind one of the seats.

One of the people near me, Sahar Qadri, was injured by a bullet or by shrapnel. The soldier immediately loaded the second magazine and began to fire spontaneously. Pieces of shrapnel were flying everywhere. I immediately gathered my strength and ran with some others who were near me. I jumped out of the bus and landed on my right-hand side, but I immediately pulled myself together, got up and went into a butcher's shop opposite the bus stop with some other people who had gotten off the bus with me.

The soldier was still aiming at us and shooting. I looked out of our hiding place in the butcher's shop. After a short while, when the shooting stopped, we came out. I looked at the bus and saw the driver's head split from the volley of shots.

I looked for my brother Sabri and found a Druze man from the neighborhood who told me that an ambulance had already taken the injured people away, and that he was one of the first to be evacuated. I stayed there for a while, I don't remember exactly how long, in order to see what was happening. Then one of the people there took me to Al-'Ain neighborhood, where I was evacuated by ambulance to hospital.

The Testimony of Fares Halalhala, ID 039077862, aged 23, Shefa'amr

On August 4, 2005, I returned from Haifa to Shefa'amr on bus 165. I got on the bus at 17:05 at the central bus station in Haifa (Checkpost). There were soldiers on the bus.

I sat on the back seat, to the right-hand side. One soldier was sitting on the back seat to the left-hand side. During the journey, I moved to the seat opposite the back door on the left-hand side because I did not feel comfortable. I do not know why I felt that.

Before we reached the Marshan neighborhood in Shefa'amr, the soldier went up to the driver and spoke to him. I could not hear the words, because I was sitting at some distance, but I saw the driver gesturing as he spoke, as if he was trying to say "Where are you going? Where? Where?" As they spoke, the soldier drew his weapon (all the passengers were surprised by this) and began to shoot a volley at the driver at point blank range. I immediately bent down between the seats and looked at the back door, which had opened in the mean time. I jumped out of my seat and got off the bus.

Afraid and in shock, I ran into a nearby alley. As I a ran, I heard a second volley of shots. The alley led to an internal road within the neighborhood, and from there I could see the road and hear what was going on. At this time I heard a third and fourth volley of shots. I noticed two people further down the road, one of them injured, hiding behind a low fence overlooking the bus.

I ran toward these people and began to look for a medic in the area. I found a medic who helped the injured man. Then I ran toward the bus to see what was happening.

The police arrived after about five minutes. I got on an ambulance at about 18:05 with a young woman called L.. The ambulance took us to Rambam Hospital in Haifa. I remember that L. was shouting and saying all the time, "He put his gun to my head."

Testimony of Nakad Nakad, ID 58567942, aged 42, Shefa'amr

On August 4, 2005, at about 17:50, I was sitting with my family on the balcony overlooking the road in the Marshan neighborhood, immediately above the bus stop. Suddenly I heard a loud gunshot below me. I immediately jumped up, looked down and saw the bus where the gunshots were coming from. I went inside, changed my clothes and went out onto the street. I saw a young man there, a resident of Shefa'amr, who had taken out his gun, but I asked him to calm down and not to open fire.

I stood by the bus with two other young men. We realized that shots were being fired in our direction. One of the young men and I ran away. The bus kept on moving until it hit an electric pole and a blue Chevrolet. Then it hit a Mercedes and stopped.

There was shooting going on the whole time. When the shooting stopped, two young men went into the bus and jumped on the terrorist, followed by another two young men. I then got on the bus with another young man.

We dragged the terrorist to the middle of the bus, by the back door. One of us handcuffed him. None of us hit him, but we saw that he was bleeding slightly from the side of his mouth. At this time all the passengers, those injured and those not, had already gotten off the bus. I turned to the soldier and

asked him, "Do you realize what you have done?" He answered calmly, "I came to kill Arabs," although he seemed quite scared.

In any case, in the meantime I tried to calm down the gathering and asked people not to get on the bus. At the same time, I saw the people who had been murdered. The driver's head was split open and he was leaning on the rail by the driver's seat to the right. One man was lying diagonally on the floor of the bus, his head to the left. Blood was flowing from him and his head was split open. The two young women were sitting next to each other. I could not see where they had been hit, but I realized that they were not moving.

In the meantime, more people began to gather around the bus and to come inside and hit the soldier. Then three policemen arrived, two in uniform and one in civilian clothes. They came onto the bus and tried to save the soldier. The policemen dragged him to the back and tried to ease the congestion in the bus. At some point someone released tear gas.

As I got off the bus, people began to help to remove the bodies. I saw three or four bodies covered. People who saw the bodies laid out were shocked and became agitated, and some of them went up into the bus and beat the soldier. At about 19:00 the soldier was already dead, because at some stage people in the crowd shouted, "The soldier is dead, the soldier is dead."

Attacks on Palestinian Citizens by Jewish Citizens

The Case of Najib Qavis, September 1, 2005

Testimony of Najib Qavis, ID 5479300, aged 48, Beit Jan

On the afternoon of September 1, 2005, I was working with my wife and daughter in our vineyard in the Al-Zaboud area, which is approximately 8 kilometers from the village of Beit Jan. The whole area of the vineyard is fenced.

Around 16:00-17:00, a group of ultra-Orthodox Jews (approximately 100 people) passed by the vineyard. The group gathered by the water pool of the vineyard and began to talk loudly, saying what a beautiful vineyard of grapes and pomegranates this was, but how it belonged to a “dirty and smelly” Arab. They continued cursing, but I ignored them and went on working, until two of them burst through the fence and went up a ladder to the water pool.

I asked them to come down the ladder immediately and leave my land. I explained to them that this was private property and they were not permitted to enter. The group outside the fence went on cursing me with nationalist epithets, belittling the fact that an Arab held such land.

One of the two young men who had climbed up the ladder to the water pool asked me: “How come you have land like this? This is our land, the land of Moses.” I answered angrily: “Come down and get out of here, this land has been registered as mine for generations.”

The crowd began to shout at me “Why are you shouting?” In the meantime, the two young men came down the ladder and began to shove me. When my daughter saw them from a distance, she went to tell my wife, and the two immediately came to my assistance. They left the fence through one of the entrances to the vineyard that is distant from the water pool area. The crowd began to throw stones at them, and when I saw this I immediately jumped over the fence to cover them.

At this point, the crowd jumped on me and I fell down. They began to beat me severely on all parts of my body, particularly the lower part of my back and

my head. They used stones to beat my head repeatedly in the same place. After this beating I felt very disillusioned. My wife and daughter brought me water and tried to help.

A shepherd by the name of Yusuf Tafash saw what was going on and came to help me, but he was also seized by the crowd and beaten. Earlier, he had tried to call the Nature Reserve (who are responsible for the area), but they said they were afraid to come to the site, although they tried to send a young Druze man called Rami Hamud who works with them. Yusuf Tafash also called the head of the local council, Mr. Yusuf Qablan, to send someone to the site of the incident.

Testimony of Mona Oavis, ID 305657744, aged 15, Beit Jan

On September 1, 2005, in the afternoon, I was working with my father and mother in our vineyard in the Al-Zaboud area near Beit Jan. A group of ultra-Orthodox Jews arrived in the area and began to insult my father. When my mother and I tried to help him, they threw stones at us and pushed and beat us. I fell down.

After they attacked and injured my father, we wanted to help him and bring him water. He was sitting on the side, and every time he tried to get up, he fell down. When the attackers realized that a large number of people were coming from the village, they began to escape toward Mt. Meron, where there is a car park. We told them that we would call the police but they mocked us.

On their way, as they were leaving the area, they kept on insulting us and shouting nationalist insults: "Smelly Arabs, this is our land, not yours." The police only arrived two hours after the incident was over.

The Case of Ibrahim Hajazi, January 20, 2005

Testimony of Ibrahim Hajazi, ID 061278354, aged 23, Tamra

On January 20, 2005 (during the Id al-Adha festival), between 19:00 and 20:30, I was with a friend, Nasser Hassan, at the Kiryon mall in Kiryat Bialik; we ate dinner at one of the mall's restaurants. After we finished eating, we decided to go home, but Hassan asked me to wait for a few minutes because he wanted to go to the bathroom. Hassan went off and I waited by the stairs next to the bathroom. While I was waiting, I suddenly saw people running, and behind them a large group of young Jewish men (12-14 of them) aged 22-27. They wore black uniforms and held batons. They came up to me, and when they got to me one of them hit my head with the baton in his hand. I asked him why he hit me and he said, "Because you're a f***ing Arab." When I tried to brush him away, the other young men in the group fell on me and began to beat

me with the batons across my body. At the same time several young Arabs gathered in the area, and when the Jewish men saw them, they ran away. As a result of the beating, I suffered two wounds to my head and broke my nose and fingers on my right hand.

My cousin, who was on the scene, called an ambulance, but it only arrived after an hour. While we waited I was on the floor. A security guard was next to me and did nothing to help. The ambulance took me to Rambam Hospital in Haifa. I asked to call the police there, but no one responded. After I left the hospital, I went to the Zevulun police station to file a complaint.

After I looked into the matter, one of the employees in the mall told me that the police knows about this group, since they always gather in the mall on Arab festivals and attack Arabs.

The Case of Amir Shama, June 15, 2004

Testimony of Amir Shama, ID 021346069, aged 26, Haifa

On June 15, 2004, my fiancée and I were at Kamil Beach in Haifa, close to the Meridian Hotel. I had brought my surfboard with me. I went into the sea to surf a little. There were other surfers around.

As I was surfing, another surfer came close to me and bumped into me by accident. His surfboard touched my waist, so I told him to be careful. But he began to curse me, and I saw two other young men coming toward us and realized they were his friends, so I wanted to calm things down. One of them asked me in Hebrew where I am from, and I told him that I am from Wadi al-Nisnas in Haifa. He told me to get out of the water. As I turned my head away, someone struck it from behind.

I began to escape toward the beach, shouting for help. I ran up to my car, but they ran after me and surrounded me, holding batons and stones. One of them held a large stone. They began to beat me on all parts of my body. I was paying attention mainly to the young man who was holding the large stone so that he wouldn't throw it at me, but in the end he threw it, hitting my leg which began to bleed as a result.

The same young man then went into the lifeguard's room and brought a sand rake, and came towards me. When I saw him, I ran toward the restaurant owned by Mr. Ibrahim Zueibi and went inside. They ran after me. Mr. Zueibi asked them why they were attacking me, and one of them said: "Shut up, you. He's an Arab." Then they left the scene.

I called the police immediately, but they began to ask me irrelevant questions so I put the phone down in my anger. Then an ambulance arrived

and took me to Rambam Hospital, where it emerged that I had sustained a cut to the front of my neck and blows to the head. The wounds were cleaned and stitched (3 stitches). I also had abrasions around my left eye. After spending three days in hospital, I went home, and I was unable to work for a month.

The Case of Hamzi Hajazi, July 8, 2003

Testimony of Ahmad Hajazi, ID 300547288, aged 19, Tamra

On July 8, 2003, at about 9.30 pm, I was at the beach in Kiryat Yam with my cousin. When we arrived at the beach, a number of Jewish youngsters asked us where we were from. We didn't understand why they were asking us, but we replied that we were from the village of Tamra. After we sat down, a young Jewish man on a bicycle began to approach us and harass us. He began to knock into us deliberately with his bike and to throw dirt in our direction. I told him to watch out. Suddenly I saw a group of young Jewish men (about 14 young men) holding batons coming toward us. I told my cousin to move away. Suddenly, one of the young men threw a baton at me, hitting my back. I grabbed the baton to defend myself.

I asked them what they wanted and they said they wanted us to leave the beach. I replied that we would go as long as they did not attack us. One of them approached me, so I pushed him away a little. Then I turned to see what was happening to my cousin. And suddenly one of them hit me hard on the head from behind. I fell to the ground and lost consciousness.

What I remember after that is that I woke up after eight days in the intensive care unit at Rambam Hospital in Haifa. They told me that I had been unconscious all this time. Then I was transferred to Elisha Hospital where I underwent two operations. According to what I was told, a large amount of blood flooded my head, causing me to lose consciousness for such a long period.

I now suffer from a disability on the left side of my body (hand and leg) due to nerve damage caused by the beating to my head. I take a special drug every day so that I can properly move my hand and leg.

Item A1 of Section H of the Penal Code

144A. Definitions

In this item, “racism” – persecution, humiliation, degradation, manifestation of hatred, hostility or violence, or causing harm to a public or sections of the population, due to color or racial affiliation or national-ethnic origin;

144B. Prohibition on publication of incitement to racism

- (A) A person who publishes material with the goal of inciting to racism is liable to five years’ imprisonment.
- (B) For the purposes of this item, it is immaterial whether the publication led to racism or not, and whether it was true or not.

144C. Permitted publication

- (A) Publication of a true and fair account of an action as stated in Article 144B shall not be considered an offense against that article, provided that it was not undertaken with the goal of causing racism.
- (B) Publication of a quote from religious writings and prayerbooks, or the observance of religious ritual, shall not be considered an offense in accordance with Article 144B, provided that it was not undertaken with the goal of causing racism.

144D. Deleted

144D2. Incitement to Violence or Terrorism

- (A) A person who publishes a call to commit an act of violence or terrorism, or praise, sympathy or encouragement for an act of violence or terrorism, support therefore or identification therewith (in this item – inciting publication), and, in accordance with the content of the inciting publication and the circumstances in which it was published, there is a real possibility that it will cause the committal of an act of violence or terrorism, is liable to five years’ imprisonment.
- (B) In this article, “an act of violence or terrorism” – an offense injuring the body or person of an individual or placing an individual in mortal danger or in danger of grievous injury.
- (C) Publication of a correct and fair report on a prohibited publication in accordance with the provisions of sub-sections (A) and (B) is not an offense in accordance with this article.

144E. Indictment

An indictment shall not be filed in accordance with this item otherwise than with the written consent of the Attorney General.

144F. Offenses out of racial motives or hostility toward a public – aggravating circumstances

- (A) A person who commits an offense out of motives of racism as defined in Item A1 or out of hostility toward a group on the grounds of religion, religious group, ethnic origin, sexual orientation or their being migrant workers, is liable to double the penalty established for that offense or to ten years' imprisonment, whichever is the lesser penalty.
- (B) In this article, “offense” – an offense against the body, liberty or property, an offense of threats or extortion; offenses of bullying and public nuisance and offenses of hazards as included in Items I and K in this section, and an offense in and toward the public service as included in Section I, Item D, all with the exception of an offense for which the established penalty is ten years' imprisonment or more.¹³⁰

The terms “to publish” and “publication” are defined in Article 34X of the Penal Code:

“**Publication**” – a writing, printed matter, or any other visual exhibit as well as any aural means likely to store words or ideas, whether on their own or with the assistance of any means;

“**Publish**” –

- (1) In oral speech – to utter words by the mouth or by other means, at a public gathering or in a public place or in such manner that people in a public place may hear them, or to express them on radio or television broadcasts delivered to the public;
- (2) In a publication other than oral speech – to disseminate it among persons or to present it in such manner that people in a public place may be able to see it, or to sell it or offer it for sale in any place, or to disseminate it in television broadcasts delivered to the public.

¹³⁰ The provisions of this article (144F) provide a proper normative infrastructure permitting the courts to increase substantially the severity of penalties for those committing acts of violence against a racist background.

