



Israel Religious Action Center | Israel Movement for Reform and Progressive Judaism

**LOVE THE STRANGER  
AS YOURSELF?  
RACISM IN THE NAME OF HALACHA**  
Racial Incitement by Rabbis in Israel

“The stranger who dwells among you  
shall be to you as one born among you,  
and you shall love him as yourself;  
for you were strangers in the land of Egypt:  
I am the Lord your God.”

Leviticus 19:34



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Racial Incitement by Rabbis in Israel

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## **Preface**

**Love the Stranger as Yourself? Racism in the Name of Halacha** is the first report of its kind collecting racist statements made by rabbis in general and by rabbis holding civil servant positions in particular. Rabbis making such statements are the minority in Israel. But their growing numbers and the legitimacy they enjoy must be a cause for concern and must spur us to action. These rabbis undermine the foundations of Israeli democracy, incite hatred and fear and besmirch Judaism as a whole with their message of xenophobia.

It might be assumed that a person who devotes his life to sacred matters would be obligated to meet high standards of ethics and morality. In reality, however, these rabbis are not called to account for actions that would be considered criminal offenses were they made by any other civil servant.

The Israel Religious Action Center (IRAC) is dedicated to fight against the government's policy of non-accountability with respect to racial incitement in the name of Halacha (Jewish religious law). Our commitment to this struggle stems from our profound commitment to Judaism and to Israeli democracy.

### **Anat Hoffman**

Executive Director, Israel Religious Action Center



## **Introduction**

*Jewish tradition considers the dignity and honor of the individual created in God's image and the making of peace among humans as the highest of values. Conversely, belittling human dignity is considered a grave offense in Jewish tradition... In the Halachic sources, the concept of "the dignity of fellows" acquired a quasi-constitutional status capable of overruling other laws. In order to prevent enmity between Jew and gentile, the Jewish sages enacted various regulations, some of which even permit the transgression of rabbinical prohibitions.<sup>1</sup>*

In recent years, we have observed with alarm the marked escalation in the quantity and virulence of racist statements made in the name of Judaism by rabbis and public leaders. These statements spread hatred against the Arab citizens of Israel, migrant workers and refugees solely because they are goyim (gentiles), and call for the exclusion of Arab citizens due to their national origins. An unprecedented development in recent years has been the issuing of Halachic rulings by hundreds of rabbis urging Israeli Jews not to rent or sell apartments to Arabs, migrant workers and refugees. Conferences and demonstrations have been held on the subject, and statements have been published claiming that all Arab citizens of Israel are the enemy. The book *The King's Torah* was published and distributed – a book arguing that a Jew's life is more valuable than a gentile's life and that condones the killing of innocents.

These publicized statements foment animosity, hatred and suspicion toward their subjects – primarily the Arab citizens of Israel, but also migrant workers, refugees, and anyone who is seen as a "stranger." They have led to the expansion of discrimination in employment and housing (the rental market) and have created tangible concern of increasing violence as the result of systematic incitement.

Racist statements have become part and parcel of general civil discourse. Rabbinical leaders – the rabbis of towns and locales, neighborhoods, and Torah institutions – preach hatred, contempt, and exclusion in the name of Judaism. Many of the rabbis quoted in this report serve as city, local or neighborhood rabbis and receive their salaries from public funds. Accordingly, the public not only suffers from the hostility they foment but even pays their wages as they do so.

Israeli law prohibits racist expression, but serious problems have been encountered in enforcing this law against rabbis. The absence of a legal response that might prevent or restrain this phenomenon heightens the need to directly confront the social problem of unbridled incitement by religious figures, public leaders and spiritual guides.

This report begins by presenting examples of the phenomenon of incitement "in the name of Halacha" from the past several years. We should emphasize that many other racist statements have been made, by Jews and Arabs. However, our review focuses on recent comments by rabbis and public leaders who claim to serve as spiritual leaders, in view of their unique function in Israeli society. We also included a poster signed by the wives of rabbis, since it is evident in this case that the women's association with their husbands is what grants them, in their own eyes, the authority to issue a public call of a social and religious character.

The second part of the report, the legal section, focuses on the law relating to racial incitement in Israel and discusses the possibilities for criminal prosecution or disciplinary action as a response to

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1. Explanatory Comments to the Proposed Penal Law (Amendment No. 24), 5745-1985, PL 195.

racial incitement. The third part provides examples of the policy of enforcement relating to such offenses – a policy that is essentially ineffectual, at least with regard to statements by rabbis and publications ostensibly based on Halacha. These racist publications bear witness to the moral perceptions and value-based choices of their authors, but they do so while claiming to present an objective Halachic view. The fourth part of the report offers selected examples of religious rulings presented in racist publications and analyzes the religious laws on which these are based. This section highlights the way in which the authors of these statements manipulate the Halachic text and the fact that their writing mainly reflects their personal choices and worldviews. The report ends with IRAC’s conclusions and recommendations for action to combat racist incitement by rabbis.

# Racist Statements by Rabbis in the Name of Halacha

## A. Permission to Kill Gentiles

### The Book *The King's Torah*

*The King's Torah – First Part: Capital Law between Israel and the Nations*, written by Rabbis Yitzhak Shapira and Yosef Elitzur, was published in October 2009 by the Od Yosef Chai Yeshiva. The book is replete with extreme racist statements inciting rebellion and violence against Arabs and other minorities in Israel. The book is divided into six chapters: The Prohibition on Killing a Gentile; Killing a Gentile who Violated the Seven Commandments; Self-sacrifice above Murder – amongst the Sons of Noah; The Jewish Soul and the Gentile Soul; Killing Gentiles in Wartime; and Deliberate Injury to the Innocent.

The book discusses the prohibition against killing gentiles in peacetime and in wartime. One of its conclusions is that a gentile is prohibited from killing a gentile, and if he does so, he is subject to the death penalty. However, a Jew who kills a gentile is not subject to the death penalty. A Jew may kill a gentile, even if the latter is not encouraging murder, if the Jew does so in order to save himself. Totally innocent persons, including babies, may be killed in order to save Jewish lives; babies may also be killed if they are being raised to be “wicked like their parents.” These statements are ostensibly based on Jewish religious law and tradition and receive Halachic support by the endorsers of the book – in the form of *haskamot* (rabbinical approbations) prefacing the book and signed by four well-known rabbis: Yitzhak Ginsburg, head of the Od Yosef Chai Yeshiva; Yaacov Yosef, rabbi of the Givat Moshe neighborhood of Jerusalem and head of the Chazon Yaacov Yeshiva; Zalman Nechemiah Goldberg; and Dov Lior, the rabbi of Kiryat Arba.<sup>2</sup>

The social climate and atmosphere described and encouraged by the book legitimize and authorize violence and even murder against gentiles. The first chapter of the book discusses the prohibition against killing a gentile. The chapter begins with the following conclusion: “We have found that the verse ‘You shall not kill’ cannot imply a prohibition against the killing of a gentile” (p. 18). Regarding penalty, the authors conclude that “a Jew who kills a gentile, even a gentile who is a ‘resident stranger,’ is not subject to the death penalty by rabbinical court” (p. 20).

The chapter “The Jewish Soul and the gentile Soul” (Chapter four) discusses a case in which Jewish life is endangered and the only way to save it is to harm a gentile. The book states:

*Saving Jewish life permits the transgression of all the prohibitions in the Torah, with the exception of the prohibitions against spilling blood, since if the possibility of saving Reuven is at the expense of Shimon's life, then the permission to save life no longer applies. **However, when saving Reuven's life comes at the expense of the life of Yefet the resident stranger, the permission to save life remains intact**, since ultimately we have here the saving of one Jewish life, which overrules the entire Torah. [Emphasis added].*

In the conclusion of this chapter, the authors deduce that it is permitted to kill a gentile whenever his presence endangers Jewish life, “even if the person is a Righteous Gentile and bears no guilt for the

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<sup>2</sup> It should be noted that Rabbi Goldberg subsequently retracted his approbation, and indeed criticized the content of the book.

situation that has emerged” (p. 164).

In a separate chapter, the authors discuss the killing of a gentile in wartime. Specifically, the authors conclude that it is also permissible to kill civilians who are encouraging the war (p. 185) and to kill civilians, including babies, who are blocking access to an enemy weapons factory or army base. “Even if the civilians were tied or trapped and have no choice but to remain on the site and serve as hostages – it is permitted to run them over and kill them, if this is the way to be saved from the wicked” (pp. 197-198). The authors also state that Jewish life takes priority over gentile life, and this is a further explanation for the permit to kill gentiles during wartime (p. 198).

An entire sub-section is devoted to the subject of children. The authors declare that “it is reasonable to harm children if it is obvious that they will grow up to harm us, and, in such a situation, they should be deliberately harmed (and not merely hurt in an attack aimed at the adults)” (p. 207).

## Encouraging Acts of Revenge

Before the publication of *The King’s Torah* and following the murderous terrorist attack on the Mercaz Harav Yeshiva in March 2008, a poster was disseminated throughout Jerusalem encouraging acts of revenge against Arabs. The poster marked a watershed in terms of racist incitement against Arabs. Since its appearance, numerous other cases of incitement have occurred in addition to numerous acts of racist violence against Arabs. Before the week-long Shiva mourning period for the victims had ended, several rabbis, including some holding public office, rushed to publish a call for further bloodshed, encouraging “acts of revenge” against Arabs in Israel.

The poster declared:

*Each person must imagine to himself what the enemy is planning to do to us and must act in like fashion (“eye for an eye”). Do not pity them, for they will not pity you.*

The poster also stated that:

*We must all devote ourselves to the fundamental and principle act of repair and work to establish a repaired Jewish state. **This apart from welcome local actions.***

...

*The essential repair that begins in each of our private homes: to stop employing and providing a livelihood for the Arab enemies, and to move to “Hebrew labor” and commerce with Jews. [Emphases added].*

The poster ended by wishing that “the Jews may gather in their cities ... to attack those who wish them ill, in those days and in this time.”

The poster was signed by Rabbis Daniel Stevsky, Yitzhak Shapira (one of the authors of *The King’s Torah*), David Druckman (rabbi of Kiryat Motzkin), Yaacov Yosef (rabbi of the Givat Moshe neighborhood of Jerusalem), Ido Elba, Gadi Ben Zimra, Shmuel Yaniv, Uzi Sharabaf, Yigal Shandorfi and Yehuda Kreuzer.

## B. Denial of Employment

The poster disseminated following the terror attack at the Mercaz Harav Yeshiva ended by calling for Arabs to be denied employment **because** they were Arab. As such, the call directly violated Israeli labor law regarding discrimination against Arabs in the workplace. In addition to the violations of labor law, such a statement labels all Arabs as enemies, as a threat, and as an element that endangers the wellbeing of the Jewish public. The posters and others like it encourage feelings of enmity, hostility and suspicion against an entire population of law-abiding individuals, and thereby foment not only discrimination but also exclusion and even violence.

In October 2008, following the second terror attack involving a tractor driver, a large number of rabbis signed a poster headed "A Response to the Blood Spilled." In part, the poster called:

*Again and again it emerges that ostensibly cheap Arab labor actually wrecks the heaviest of prices on us, in blood. The murderous tractors driven by Arabs from East Jerusalem are merely the tip of the iceberg of a national problem that has long since become an existential danger that threatens the wellbeing of the nation dwelling in Zion, as sources of livelihood are usurped and Jews are displaced at every turn. Through the creeping seizure of Jewish neighborhoods, through insolence and audacity, through increasing verbal and physical violence, through the systematic and deliberate offense to the honor of Jewish women, and up to the point of intermarriage with Jewish women who fall into their net.*

...

*The time has come to tell the truth: providing a livelihood for our enemies leads to grave consequences...*

Under the heading "A Call to Action," the poster added:

*As a first, practical step, we urge people to stop employing the Arab enemy, at least within our immediate circle. · We will not let the enemy into our home. · We will not purchase from the enemy. · We will not directly employ enemies.*

## C. Denial of Housing

The demand not to employ Arabs and not to let or sell apartments to Arabs has intensified since 2009. Over the past two years, numerous such calls have been made by rabbis, particularly in the form of joint demands presented through the signing of a common document calling on Jews not to let apartments to Arabs, migrant workers, refugees or other foreigners (who are sometimes referred to generically as "Sudanese" or "Africans"). Here too, such demands constitute a call to discriminate against the members of these groups and to prevent their renting or buying apartments merely because of their ethnic origin. Many Arab students in the north of Israel now report that they find it very difficult to rent apartments in Tzfat and other Jewish cities.<sup>3</sup> Such publications are not confined to the subject

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**3.** Nir Yahav, "Landlord in Tzfat Evicted Arab Students from His House," Walla! October 31, 2011. The article reports that four Arab students "signed a rental contract in the morning for an apartment in one of the southern neighborhoods of Tzfat. In-

of housing but portray the entire Arab population, or group of “foreigners,” as a threat and a suspicious group that should be excluded and removed from our streets. These statements are racist in nature as they encourage strife and hatred between different sections of the population purely on the basis of national or ethnic origin.

### **“New Sanhedrin” Poster**

On August 17, 2009, the rabbis of the “New Sanhedrin” signed a new Halachic ruling imposing severe sanctions on Jews who sell land to Arabs (the original Sanhedrin was the supreme judicial body during and shortly after the Second Temple period). The ruling describes the “seizure” by Arabs of Jewish neighborhoods and the “displacement” of Jews from their living areas. The ruling then continues:

*... Any Jew who lets or sells an apartment or land to a gentile in a place inhabited by Jews ... assists by his action in the persecution of his other compatriots. And he is guilty in retrospect of the grave offenses of delivery, persecution and treason.*

The Halachic ruling also stated:

*The letting of real estate to a non-Jew ... is an act of treason against the Torah and the Holy People ... A Jew who transfers possession of land to a gentile, from the date of this ruling, shall not be able to serve as a public emissary [in the synagogue], is not to be included in the prayer quorum, and is certainly not to be called up to read from the Torah.*

### **Rabbinical Conference in Pisgat Zeev, Jerusalem**

In August 2009, a rabbinical conference was held in the Pisgat Zeev neighborhood of Jerusalem. The title of the conference was “Neighbors Selling Their Homes in the Neighborhood to Gentiles – What Is the Position of the Halacha on Such Actions?” Keynote speakers at the conference included Rabbi Shmuel Eliyahu, the rabbi of Tzfat, Rabbi Yaacov Yosef, Rabbi David Shalem, head of Agudat Israel, former Member of Knesset Rabbi Meir Porush, and Member of Knesset Michael Ben Ari. Rabbi Shalem was quoted as saying:

*If you do something that harms me, I will not forgive you. My method is the paths of pleasantness, but I also know how to threaten. Two weeks ago, I was in the home of someone who sold an apartment to Arabs. I told him, “I’m not leaving until you tell me that you are cancelling the sale.” Then I had to threaten to follow him wherever he went with photographs and to bring the tax authority to investigate him. In the end, he got scared and backed down.*

### **Rabbi Shmuel Eliyahu**

Since 2002, we have witnessed a deluge of racist statements made by Rabbi Shmuel Eliyahu. Rabbi Shmuel Eliyahu is the rabbi of the city of Tzfat, the son of Rabbi Mordechai Eliyahu and an

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the evening, they were asked to leave the premises immediately, after the landlord claimed that he was subjected to threats by a group of Haredi Jews. One of the evicted students recalled: ‘We fled from the apartment after the landlord told us that the Haredi Jews were waiting nearby. Only after making sure that they were not there, we came to take our belongings and fled.’ See also, Interview on the radio program “All Talk” with Razi Barkai, October 26, 2011, in which an Arab student described the difficulties faced when trying to rent an apartment in Tzfat.

important rabbinical figure in his own right. Rabbi Eliyahu makes frequent public statements on topical issues, such as security and warfare and Jewish-Arab relations. Eliyahu's general worldview is that Arabs are the enemy – they threaten the wellbeing of Jews and of the land of Israel and pose a danger to Jewish women. Accordingly, he argues, they should be removed from Jewish cities, if not from the country as a whole. At the very least, they must live in complete segregation from the Jewish public.

Rabbi Shmuel Eliyahu has made dozens of similar statements over the past decade. In our report, we will confine ourselves to a selection of statements from the past year. Rabbi Eliyahu's statements as presented below relate to several themes, including the denial of housing and employment and general comments regarding the supposed inferiority of the Arab people. For the sake of convenience, we present all his comments under the heading "denial of housing," though, as noted, they also touch on additional issues.

In October 2010, Rabbi Shmuel Eliyahu held an "emergency conference" in Tzfat entitled "The Silent War – Fighting Assimilation in the Holy City of Tzfat." The conference was funded by the Tzfat Religious Council and was a communal call to action against the integration of Arabs in the city and against the establishment of a medical school in Tzfat. The opposition to the medical school was motivated by fear that the institution would attract Arab students to the city and might lead to the development of relations between Jews and Arabs (and particularly between Jewish women and Arab men).

The conference was held against the backdrop of a statement by 18 rabbis, headed by Rabbi Eliyahu, a statement that became known as "the Rabbis' Letter." The Rabbis' Letter urged Jews not to sell or let apartments or plots of land in Israel to gentiles: "And to add insult to injury, those who sell or let an apartment to them in an area where Jews live cause great injury to their neighbors." The Rabbis' Letter was published to prevent Arab students attending educational institutions in Tzfat from renting apartments in the city during their studies. The Rabbis' Letter also claimed that those who sell or let apartments to non-Jews lead to a drop in the market value of adjacent properties. The rabbis added that "their way of life is different from that of Jews, and some of them hate us and seek to harm us to the point of mortal danger." The rabbis ended their letter by asking "the neighbors and acquaintances of the seller or letter to alert and warn him, and thereafter they are permitted to publish his name, to distance themselves from him, to deny him commerce, not to call him up to the Torah, and so forth."

Following the conference and the publication of the Rabbis' Letter, Rabbi Eliyahu mounted a media campaign accusing Arabs in general, and the Arab population of the Galilee in particular, of an attempt to seize control of Jewish land. As part of his campaign, Rabbi Eliyahu published an article in Ha'aretz, entitled "Judaizing the Galilee – This is Zionism" (November 9, 2010). In the article, Rabbi Eliyahu again urges Jews not to sell or let apartments to Arabs, and relates:

*Recently, I have been asked many times by residents of Tzfat whether it is permissible to sell a house to an Arab. Those asking the question noted that the Arabs are offering prices that are tens of thousands of dollars above the market rate. There is no reason to imagine that the Arabs are poor businessmen. The simple conclusion is that this is not a matter of innocent commerce but an attempt to seize control, encouraged by hostile elements – to make Tzfat like other cities that have become Arab or half Arab.*

***There is a fact that it is unpleasant to mention in writing: the mentality and lifestyle of the Arabs leads Jews living in the neighborhood to flee.*** Jews do not wish to live alongside Arabs and leave areas where a home has been sold to an Arab. This is how entire neighborhoods in Akko, Jaffa and Lod have become Arab. Nazareth Illit

and Carmiel are struggling to maintain their character – and these are cities that were specially created, by government decision, in order to judaize the Galilee. We are struggling to prevent this from happening in Tzfat, too.

*The purchasing activities and invasion by Arabs is one side of the coin. The other side is the prevention of sales to Jews. In the case of the Palestinians, anyone who sells land to Jews is shot. This is the official law of the “moderates,” the adherents of the Palestinian Authority. Within the State of Israel, they use other methods against any Arab who dares to sell a home to a Jew. [Emphasis added].*

During the days preceding the publication of the aforementioned article, Eliyahu gave media interviews<sup>4</sup> in which he again urged Jews not to let apartments to Arabs in Tzfat or in any Jewish locale. He even acknowledged that he personally telephones residents that he knows are renting apartments to Arabs and attempts to persuade them to desist from doing so.

Rabbi Eliyahu later expanded his comments, touching on the overall lifestyle of “the Arabs” and the need to separate Arabs and Jews. In an interview for the weekend supplement of Ma’ariv, he expounded:

*This is not a localized phenomenon, it is a behavioral one. **You cannot come to a quiet, noble tourist town and feel as though it is an Arab village. If you are a guest, behave like a guest.** But if you want to feel like a landlord and dictate matters of style, then there is a Halacha that says that it is prohibited to let a house to you. Once there are more than three Arabs in a neighborhood, the Halachic significance is that Jews hand over the center to them. **A Jew should not flee from Arabs. A Jew should make the Arabs flee. There is a silent war going on here for land. With Saudi funding. With antisemitic banknotes. The goal is to conquer the land – to create a situation in which we will be unable to live here. The Arabs are patient and composed. They say to themselves – ‘Let’s occupy one street after another, one neighborhood after another, and remove the Jews from their land.’ The apartments that Arab students wish to buy or rent in Tzfat are a manifestation of a sophisticated war in which money takes the place of weapons.***

...

***Because the Arabs bring their norms here with them.** A study by a professor at Haifa University has determined that most of the violence in Israeli society stems from the Arabs. I have seen with my own eyes Arab students who came to Tzfat, were only here two days and had already started flirting with girls from the religious seminary. Modest girls who came to study in a religious atmosphere were forced to turn round and flee. **As soon as you give the Arab a place among us, it takes him five minutes to start doing whatever he likes.** If he dared to treat Arab girls in his village the way he treats Jewish girls, they would throw him to the wolves and slaughter him in the town square. It’s only by us that the Arabs feel free. **For them, our girls are easy prey. And not only in Tzfat. Ask the Jewish girls who study on Mount Scopus what a nightmare they have to go through every night.***

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4. Interview with Galei Tzahal and “Mabat” on Channel One, both from November 3, 2010.

...

*I'm not against Arabs. I'm in favor of strengthening girls and the religious family. **Expelling Arabs from Jewish neighborhoods is part of the strategy.***

*The Israeli Arabs want to annihilate me and remove me from the land. So I don't need to engage in discussions with them. What does it matter what they say? What matters is what I know. They have a clear agenda to obliterate the Jewish State of Israel.*

...

*I have much compassion for humans, and even for animals. I have no compassion for enemies. Once someone comes and tells me, in my own home, that I am a guest and he is the master of the house; once someone distorts history; once someone behaves in my city as if it were his village; once he declares his goal of transforming the character of the city of Tzfat – there is no obligation for me to have compassion for him. On the contrary. Jesus said that we should also pity our enemies. I don't operate according to Jesus' crooked standards. My standards say that whoever pities enemies is a stupid fool.*

...

*The Arabs have a different code, violent norms that have become an ideology. Just as agricultural theft is an ideology for Arabs. Just as extortion of protection money from farms in the Negev is an ideology. Five months ago, the leading Arab journalist, Zuhair Andreus, editor of the newspaper **Ma' al-Hadath**, wrote that someone who sells land to a Jew is worse than a woman who cheats on her husband. The woman violates the honor of the family, but the person who sells to a Jew violates the honor of an entire people. We must note that the expression "a woman who cheats on her husband" is a code for cruel murder. In the Palestinian Authority, for example, anyone who sells land to a Jew is executed. A friend of mine bought an apartment in the Old City of Jerusalem. They caught the Arab who sold him the house, poured gasoline on him, and burned him alive.*

...

*Arab culture is very cruel. In Tzfat, during the 1929 riots, close to the street where I now live, they caught Jews, hung them from the ceiling by their feet and burned their heads on an oil stove. Even today, in Gaza, they throw people off roofs and drag them round the city center by jeeps. We saw what happened to the Jewish soldiers who got caught in Ramallah by mistake. The whole public – not an isolated individual – lynched them. And this is the Authority we have peace agreements with. In 1929, Arab neighbors who had lived peacefully next to Jews, one yard next to the other, cut off their hands and heads, not to mention rape and looting. This is the culture of the Arabs. You can't argue about it or close your eyes.*

*Sheri Makover-Belikov, "Rabbi Eliyahu: 'A Jew Should Not Flee from Arabs,'" Ma'ariv – Weekend, November 19, 2010 [emphases added].*

### **The Rabbis' Letter**

In December 2010, dozens of city rabbis signed a Halachic ruling prohibiting Jews from letting apartments to Arabs (the Rabbis' Letter). The initiative was motivated in part by a desire to persuade the authorities not to prosecute Rabbi Shmuel Eliyahu for his racist statements. Eliyahu could not be prosecuted if dozens of city rabbis who similarly receive state salaries concurred with his appeal. The rabbis in question believed that their letter would make clear to the Attorney General that what was in

question was a principled Halachic position (and not racism) and thus, legal action could not be taken against any of the rabbis involved.

The ruling was signed by, among others, the following city rabbis: Yosef Sheinin of Ashdod, Moshe Havlin of Kiryat Gat, David Woolfe of Rishon Lezion, Avraham Margalit of Carmiel, Zion Subeiri of Gedera, Shmuel David of Afula, Simcha HaCohen Kook of Rehovot, Azaria Basis of Rosh Ha'ayin, Yitzhak Jacobovitch of Herzliya, Yeshayahu Maitlis of Nahariya, Yeshaya Herzl of Nazareth Illit, David Tzadka of Pardes Hannah, and Amram Ohayoun of Ofakim.

### **Rabbi Domev and the Rabbis of Bnei Brak**

In November 2010, a Halachic ruling was published in Bnei Brak prohibiting the letting of apartments to Africans.<sup>5</sup> The ruling was signed by six rabbis, including neighborhood rabbis, yeshiva heads and the head of the Tel Aviv Rabbinical Court, Rabbi Dov Domev. The ruling made the following assertions regarding the African population in the city of Bnei Brak:

*A call regarding the terrible weakness whereby owners of apartments let their apartments to persons unlawfully present in Israel, and such like. This matter has grown to terrible proportions, and the situation today is appalling. These people, some of them bored, wander around the entire neighborhood. This causes not merely a nuisance, but also graver problems. Several families have already contacted us who are weeping for their children, and we have said enough for those who understand... Those who let [apartments] to them assume responsibility for the spiritual disasters that will result.*

Rabbi Menashe Zalicha, the rabbi of the Pardes Katz neighborhood and one of the signatories of the Halachic ruling, explained:

*The Sudanese refugees have become a serious nuisance for the residents... It must be understood that this is a neighborhood of 40,000 residents, so if there were two or three Sudanese, it would not be felt. But we are already talking about thousands... This is a spiritual danger, and Pardes Katz has become Sudan. This is spoiling the spirituality of the neighborhood.*

### **Rabbi Meir Kessler – Rabbi of Modi'in Illit**

In December 2010, the press reported<sup>6</sup> that the city rabbi of Modi'in Illit had sent an official letter to landlords in the city stating: "In accordance with the instruction of the city rabbis, may they live long, Amen, a place of residence is under no circumstances to be let to foreign workers, without any provision for permission. Accordingly, you must immediately evict the tenants from the building under your ownership." In other words, a city rabbi responsible for religious services in the city and for providing advice and assistance on religious matters, demanded the eviction of innocent residents of his city merely because they were migrant workers.

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5. Yoav Zeitun, "Rabbis in Bnei Brak: Do Not Let Apartments to Africans," *YNET*, November 8, 2010.

6. Kobi Nahshoni, "Modi'in Illit: Rabbi Demands Eviction of Non-Jewish Tenants," *YNET*, December 28, 2010.

## **D. Prohibition of Personal Relationships between Jewish Women and Arab Men**

Rabbi Eliyahu's strategy of stigmatizing young Arab men as preying on young Jewish women became a central theme in racist incitement over the past year. The claim is that young Arab men deliberately seek to win over Jewish girls. The girls who succumb to the men's advances become maidservants for the men's family, suffer violence and intimidation and often are unable to escape.

### **The Letter of the Rabbis' Wives**

In December 2010, the organization Lehava (an acronym for "Preventing Assimilation in the Holy Land") published a letter signed by dozens of rabbis' wives calling on young Jewish women not to engage in contact with Arab men. The signatories included Rabbanit (an honorific title for a rabbi's wife) Nitzchiya Yosef, the wife of Rabbi Yaacov Yosef; Rabbanit Esther Lior, the wife of Rabbi Dov Lior of Kiryat Arba; Rabbanit Shulamit Melamed of Beit Alon; and Rabbanit Sterne Druckman of Kiryat Motzkin.

The letter stated:

*There are more than a few Arab laborers who call themselves by Hebrew names. Yusuf becomes Yossi, Samir becomes Sammy, and Abed becomes Ami. They try to get close to you. They try to make you like them and heap all the attention in the world on you... But this behavior is only temporary. Once they've got you in their hands, in their village, under their control – everything changes... Your life won't be the same again, and the attention you craved will be replaced by curses, beatings and humiliation.*

*... Do not date gentiles, do not work in places where there are gentiles, and do not perform National Service together with gentiles.*

# The Legal Situation

## A. Israeli Law and Racial Incitement

Israeli law explicitly prohibits the publication of racial incitement. The offense of racial incitement (Article 144B in the Penal Code, 5737-1977) was enacted during the 1980s in response to the growing problem of racism in Israel and the sense in the Knesset that this phenomenon must be addressed, for the first time, in legislation. Various proposed laws were tabled at the time, including the Proposed Basic Law: The Knesset (Amendment Number 12), 5745-1985, which clarified the need for legislation against a publication intended to incite to racism. The explanatory notes to the proposed law noted: "The phenomenon of racism is contrary to the values on which the State of Israel is founded. For generations, the Jewish people has been the victim of racial incitement, and it is only natural that the State of Israel will fight this phenomenon vigorously."

Justice Matza defined the purpose of amending the penal code to include the prohibition against racial incitement in CA 2831/95 **Rabbi Ido Elba v. State of Israel**, Piskei Din 50(5) 221 (hereinafter: "**Ido Elba**") – the guiding ruling of the High Court of Justice for the offense of racial incitement. In his decision, Matza stated: "These steps were designed for a common purpose: To protect the State of Israel against the grave dangers inherent in anti-democratic and racist ideas and to maintain the Jewish and democratic character of the state."

The Knesset subsequently enacted Article 144B of the Penal Code, which defines the offense of incitement to racism:

**(A)** *A person who publishes something with the goal of inciting to racism is liable to five years imprisonment.*

**(B)** *For the purpose of this section, it is immaterial whether the publication led to racism or not, and whether or not it was truthful.*

Article 144A of the Penal Code defines racism as:

*The persecution, humiliation, degradation, manifestation of enmity, hatred or violence, or causing of strife toward a public or parts of the population due to color or racial affiliation or ethno-national origin.*

Accordingly, the publication<sup>7</sup> of an article, the making of a speech, or the dissemination of written or oral messages containing racist themes are prohibited in Israel and constitute a criminal offense. However, the offense requires that the publisher does so "with the goal of inciting to racism." Court rulings have established that the offense is present if the person publishing the incitement intends the public to adopt the positions he expresses. It is not necessary, however, to prove that the publication actually led to racist acts against the public targeted by the incitement.<sup>8</sup>

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**7.** Article 34 of the Penal Code defines "publication" as: "A document, written matter, computer material, or any other visual display, as well as any oral means liable to convey words or ideas, whether on their own or with the assistance of any means."

**8.** In the **Ido Elba** case, Justice Matza found that the awareness required of the publisher relates to the possibility that the

An exception regarding religious writings applies to the prohibition against disseminating a racist publication. Subsection B of Article 144C of the Penal Code establishes that: “Publication of a quotation from religious writings and prayer books, or observing a religious ritual, will not be considered an offense in accordance with Article 144B, provided that they were not undertaken with the objective of racial incitement.”

The *Ido Elba* case involved the publication by Rabbi Ido Elba of a Halachic ruling entitled “The Laws of Killing a Gentile.” The court opinion, the guiding ruling for the offense of racial incitement, established the manner in which the exception regarding religious writings is to be interpreted. The racist essay discussed in the court opinion was comprised of quotes from religious sources, arranged in a particular order and with an analysis constructed in order to lead to the conclusion that it is permissible to kill a gentile. In this case, the court engaged in a detailed examination of the matter and reached the following conclusions:

- 1)** It is not sufficient that the essay has the character of a study of Halachic rulings; the content itself must be examined. It was determined that the content in the Ido Elba case embodies hostility, hatred and acts of violence against non-Jews;
- 2)** One must examine what message the publisher is attempting to convey and what is the motive for the publication or composition of the article;
- 3)** The fact that the author presents quotes from the religious sources by way of background and support for his own conclusions will testify to the intent to incite to racism;
- 4)** One must examine whether the essay attempts to convey a topical message, as distinct from a theoretical matter detached from the contemporary context.

An additional unique characteristic of the offense of racial incitement is that the authority to indict rests solely with the Attorney General. In “ordinary” offenses, various functionaries in the State Prosecutor’s Office and the police are empowered to serve indictments, but in offenses relating to expression, this authority rests solely with the Attorney General. The restriction of the function empowered to serve indictment is intended to restrict the quantity of indictments and to ensure that investigation and prosecution for offenses relating to expression are not overused – something that might hamper freedom of expression due to fear of capricious criminal proceedings.

Not only must the decision to indict be made by the Attorney General (inevitably lengthening the process because of the Attorney General’s heavy workload), but the preliminary decision to open a criminal investigation must also be made by the Attorney General or with his/her agreement. The actual processing of offenses of incitement rests with a senior prosecutor in the State Prosecutor’s Office. This concentration of authority creates a bottleneck, and while it guarantees the handling of cases in professional fashion, it constitutes a tremendous burden on the system.

The practical outcome is that cases of racial incitement are processed over an extremely protracted period of time. This is particularly true regarding cases of rabbis suspected of racial

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public receiving the publication will be incited to racism: “The possibility of causing consequences of the action, requiring awareness on the part of the publisher, does not relate to potential injury to the public against whom the publication incites, but rather to the possibility that the public that receives the publication will be incited to racism in its wake.” *Ido Elba*, at para. 18. Justice Matza subsequently clarified that, for the purpose of the special intention required in this offense – the intention to incite to racism – the rule of expectations applies. In other words, it is sufficient that the publisher was aware of the reasonable outcome of his or her actions. It should be noted that, in the *Ido Elba* case, the judges disagreed regarding the applicability of the rule of expectations to the offense of incitement to racism. However, it was determined that the ordinary psychological foundation of awareness is present. For a detailed analysis of the ruling in this case and the applicability of the rule of expectations, see: M. Kremnitzer, “The Elba Case: A Clarification of the Rules of Racist Incitement,” *Mishpatim* 30 105, 126 [5759].

incitement. According to the data we collected, between one and 16 (!) months may pass before a decision is taken to open a police investigation; and between one and several years from this decision to the decision to prosecute or to close the file. It seems improbable that the heavy workload alone can explain these long periods of decision-making in cases that are far from complicated in factual terms. It is fair to assume that the fact that the suspects are rabbis has great influence and leads to caution and even reticence in the decision-making process.

In the current situation, in which months and even years pass before any action is taken, the authorities fail to provide a fitting response to documented cases of racial incitement. In many cases, files are closed on questionable grounds, and racial incitement, particularly by rabbis, is left without any legal response or criminal enforcement.

## B. Absence of Disciplinary Action against Rabbis

Another egregious example of the ineffective response of law enforcement to racial incitement by rabbis is the absence of any disciplinary action against rabbis who are civil servants – rabbis who fill public positions and receive their salary from public funds. Despite repeated complaints to the Minister of Justice, who is responsible for applying disciplinary codes to municipal rabbis, no disciplinary action has ever been pursued against a rabbi on account of racist statements, even in the case of repeat offenders.

Rabbis who are civil servants can be divided into two main categories:<sup>9</sup> city rabbis (chief rabbis of cities) and neighborhood rabbis (rabbis employed by the local religious council). Surprisingly, neighborhood rabbis are not subject to any disciplinary sanction. For some four decades (since the enactment of the Jewish Religious Services Law [Combined Version], 5731-1971), the government has refrained from applying the disciplinary rules for civil servants (or any other disciplinary code) to the employees of the religious councils.<sup>10</sup>

Disciplinary jurisdiction over city rabbis is regulated in Article 12A of the Jewish Religious Services Law. Article 12A empowers the Minister of Religious Affairs<sup>11</sup> to submit to a disciplinary tribunal, whose members are appointed by the Chief Rabbinate Council, a complaint against a city rabbi in the following instances:

- 1)** If the rabbi has acted improperly in performing his duties;
- 2)** If the rabbi has acted in a manner inconsistent with the status of a rabbi in Israel;
- 3)** If the rabbi has been convicted of an offense bearing shame in the circumstances of the matter.

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**9.** In addition to these two categories, mention should also be made of the chief rabbis of the state, who are defined as civil servants. Rabbis are also employed in various functions in the civil service or in local authorities. We do not discuss this category in this report since, to the best of our knowledge, there are no reported cases of incitement by those holding these positions (with the exception of incitement by members of Knesset who are also rabbis). Moreover, those in these positions do not serve in their capacity as rabbis.

**10.** Article 13(C) of the Jewish Religious Services Law authorizes the government to order that “the provisions of the Civil Service Law (Discipline), 5723-1963, and the regulations in accordance therewith, will apply, in full or in part, to the employees of religious councils, with such changes as are considered necessary in order to adapt the provisions to the structure of the councils.” As noted, no such decision has ever been taken and, accordingly, the employees of the religious councils are excluded from disciplinary law. In 2008, IRAC submitted a petition to the Supreme Court on this matter, and the Supreme Court recently issued an interim decree instructing the State to explain why it should not apply the disciplinary provisions for civil servants to the employees of the religious councils (HCJ 2959/08).

**11.** In 2005, this authority was transferred to the Minister of Justice.

The first two instances empowering the Minister to submit a complaint to the disciplinary tribunal are broad and vague. The intention is clearly to cover a wide range of behaviors or actions that are inappropriate for a rabbi serving in a prominent public office.

It should be clarified that the system of disciplinary rules applying to civil servants and employees of local authorities operates alongside criminal law. The purpose of disciplinary rules is to ensure the propriety of the civil service and those employed thereby, and to maintain the normative operation of public administration, discipline, and proper governmental arrangements. The purpose of disciplinary law is to ensure the proper functioning of the civil service and its image and to ensure the public confidence in its functioning. Justice Y. Zamir explained:

*The essential purpose of disciplinary law is to protect the civil service. The need to protect the civil service is not fully manifested by criminal law. Even if a penalty of a fine, imprisonment or other penalty is imposed on a civil servant in a criminal proceeding, there is still a need to clarify whether a disciplinary proceeding should also be instigated against him: is it proper that this civil servant remain in his position, or should he be transferred to another position, or demoted, or even dismissed from the service – this in order to prevent further damage to the civil service by the employee, or in order to protect the image of the service and public trust, and also in order to uproot improper phenomena in the civil service and deter other civil servants from acting in a manner inappropriate to the service (Sund. Adm. App. 1928/00 **State of Israel v. Bruchin**, Piskei Din 54(3) 694, 705) [hereinafter: “**Bruchin**”].*

Criminal law does not obviate the need for disciplinary law, since these two legal systems are founded on different purposes. It is important that both are maintained, in a parallel manner. Criminal law is based on the public interest in punishing forbidden acts and in deterrence, while the disciplinary proceeding is based on the interest of ensuring that the civil service is proper, reliable and impartial in its treatment of all citizens and residents of the state. In some cases, the use of criminal law is not justified – the actions do not constitute criminal offenses; evidentiary difficulties or other obstacles to prosecution exist; or various policy considerations tip the balance in favor of non-prosecution. In such situations, the need for disciplinary action must be investigated separately.

These basic principles, guiding the discretion to be used in the exercise of disciplinary action, **have not** been adopted by the various Ministers of Justice when dealing with charges of racial incitement by civil servant rabbis. No separate disciplinary investigations have been conducted and no official disciplinary complaints filed. The declarative position adopted by Ministers of Justice, past and present, has been that in the absence of a criminal proceeding, there is no justification for a separate disciplinary proceeding. In other words, once it has been decided not to open a criminal proceeding – as in the vast majority of cases – the disciplinary complaint is also closed, despite the fact that the two courses are distinct and require, at the very least, the application of different discretion in the framework of a separate administrative procedure.

The various Ministers of Justice do not even trouble themselves with responding to disciplinary complaints, making it impossible to ascertain why each individual case was closed. From the small number of cases in which a reply was provided (and this only after repeated reminders requesting an explicit response on the disciplinary matter), the following position emerges: the Ministry of Justice argues that the criminal proceeding takes priority in each instance. Accordingly, the Minister of Justice is unwilling to undertake any disciplinary investigation prior to the completion of the criminal

proceeding. It should be emphasized that, in most cases, the latter constitutes no more than a preliminary examination as to whether a criminal investigation should be opened. However, until this examination has been completed, the disciplinary proceeding is not considered.<sup>12</sup> If the criminal case is then closed, the disciplinary case is closed automatically. Even in cases where criminal prosecution took place, no disciplinary proceeding was undertaken, even if the criminal case was dismissed at a later stage.<sup>13</sup>

The failure here is obvious: the absence of a structure (evidentiary or otherwise) guiding the criminal case has no bearing on the decision to open a disciplinary investigation. Even if, for example, it was decided that there is insufficient evidence of intent to incite to racism in the criminal context, it must still be determined, in the framework of a disciplinary proceeding, whether it is fitting and proper for a city rabbi to make hateful statements regarding a broad section of law-abiding citizens.

Law enforcement authorities and the Minister of Justice also fail to consider that disciplinary action provides the State with a less severe alternative to criminal punishment (the gravest possible penalty for a disciplinary offense is loss of a public position). Accordingly, there may be many cases in which it is actually preferable to employ this tool, which reflects public and value-based disgust at comments that foment hatred and discrimination by a person in a public position without recourse to the severe tool of criminal indictment and all that it entails.

The result of postponing disciplinary investigation until the completion of criminal proceedings is a lack of rapid and real-time response to acts of incitement. A problematic situation ensues. All branches of law enforcement remain silent, creating an air of legitimacy for incitement and signaling that similar statements may continue to be published. Even if it is ultimately decided not to prosecute, the absence of a disciplinary proceeding makes clear that the behavior in question is acceptable and proper for a rabbi serving in a public position. This “all or nothing” approach means that, in the vast majority of cases, the public is obliged to accept “nothing.” No action, neither criminal nor disciplinary, is taken against a rabbi who incites to racism. The rabbi remains in his position and continues to receive his salary, while the public pays the price in the form of heightened tension and hostility between two sectors of the population.

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**12.** A clear example is the case of Rabbi Shmuel Eliyahu, who authored and disseminated the Rabbis' Letter, and, at the same time, gave protracted interviews to leading media outlets in which he reiterated the messages conveyed in the letter. No reply was received to any of the disciplinary complaints against Rabbi Eliyahu. In 2010, IRAC petitioned the Supreme Court (HCJ 9290/10) against the Minister of Justice for his failure to commence any disciplinary proceedings against Rabbi Eliyahu. In his response to the court, the Minister stated that he did not intend to take any action so long as the criminal investigation was in progress. At the time the Minister submitted his response, over three months had passed since IRAC's first complaint had been submitted, and no decision had been made regarding whether to open a criminal investigation. As of the date of publication of this report, approximately one year has passed since the complaints were submitted, and no preliminary decision has as yet been made regarding the opening of a criminal investigation.

**13.** This was the case regarding Rabbi Shmuel Eliyahu, who was indicted on three counts of racial incitement (CC Jerusalem Mag. 1337/06). After the rabbi was indicted, the criminal case was closed due to an arrangement reached with the prosecution, whereby the rabbi published a public “clarification” regarding the “true” intentions behind his statements. Following the closure of the criminal case, all disciplinary complaints against Rabbi Eliyahu were also closed. In light of the arrangement reached with the prosecution, it had been decided not to submit a disciplinary complaint.

## C. Freedom of Expression and the Prohibition against Incitement

The primary justification for non-enforcement in cases of racial incitement is freedom of expression. This justification and the conflict arising from it have been the subject of public and academic debate for many years.<sup>14</sup> Freedom of expression is a basic right enjoyed by all persons in Israel and is of particular importance in the case of a public personality, for whom public expressions are the way to reach supporters. However, it is doubtful whether, in the name of freedom of expression, the prohibition against racial incitement may be abolished. Racist expression advances a world view and value system that one group of people is superior to another. As such, it is completely contrary to the democratic world view on which the principle of freedom of expression is based. The Knesset stated its position regarding this dilemma and concluded that the State needed to prohibit expressions intended to spread racism. Once such a prohibition exists, the law enforcement system is surely obliged to enforce it.

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**14.** See: David Kretzmer, *Freedom of Speech and Racism*, 8 CARDOZO L. REV. 445, 458 (1986-1987) (in English; all other sources quoted in this report are in Hebrew), as quoted in CA 6696/96 *Kahane Benjamin v. State of Israel*, Piskei Din 52(1) 535, 573, as well as the comments of Justice Matza, *ibid*, pp. 579-580, and Justice Matza's comments in the Ido Elba case, pp. 267-268, para. 24: "I am of the opinion that racist expression is not included among those offensive, irritating or outrageous expressions to which a free society must reconcile itself, despite its revulsion to them. Racist expression is an exception. It lies outside the confines of the democratic worldview, and the gates of freedom of expression are locked to it." In the *Ido Elba* case, Barak, the President of the court, expressed the opinion that racist expression is indeed included in freedom of expression, but the injury caused thereto in the offense of racial incitement is for an appropriate purpose (see the *Ido Elba* case, pp. 290-291).

## **Enforcing the Law against Racial Incitement by Rabbis – Facts on the Ground**

An examination of law enforcement activities in the field of racial incitement raises several clear conclusions. Firstly, each complaint is examined cautiously and with painstaking detail, and processing of complaints is typically a very protracted process. Secondly, there is trend to limit the number of investigations into alleged racial incitement. When an investigation is opened, there is a clear tendency to then close it without prosecution. As noted above, this trend is particularly evident in cases of racial incitement by rabbis and in cases where the racist expression masquerades as a Halachic ruling.

Thirdly, in most cases, non-enforcement is motivated by an underlying policy of exercising restraint in prosecuting offenses related to expression. Applying this policy to racial incitement leads to a highly restrictive interpretation of the foundations of the offense. As a result, in the vast majority of cases, the State concludes that there are no grounds for an indictment.

Data collected by IRAC over recent years shows that many complaints of racial incitement by rabbis (or racial incitement ostensibly based on Halacha or on religious considerations – hereinafter: “**rabbinical incitement**”) are never investigated. Of 48 complaints of rabbinical incitement known to IRAC from 2002 through August 2011, the police opened a criminal investigation in 18 cases, or in 37.5% of cases. The remainder of the complaints were either closed without investigation (15 cases, 31.25%), or it is impossible to know what transpired in the case, since the complaint received no response (15 cases, 31.25%). For purposes of this report, we will regard cases in which no reply was received as ones in which no criminal investigation was opened. Accordingly, in 62.5%, a police investigation was not opened following a complaint of rabbinical incitement.

Of those cases in which the police **opened** an investigation concerning rabbinical incitement, four cases, or 22.22%, were closed after the investigation. In nine cases (50%) a decision has not yet been made (cases were opened in 2008 onward). To the best of our knowledge, in six of these cases, the investigation is still being pursued, while in the remaining three cases it is unclear what has transpired. It must be assumed that these cases were closed, given the time that has transpired and the inability of the relevant authority to provide status updates for these complaints.

In only five cases<sup>15</sup> of rabbinical incitement, constituting 27.77% of the total cases investigated by the police, indictments were filed. In four of these cases, the indictment was dismissed or withdrawn following an “apology” by the rabbi involved.<sup>16</sup> In one instance alone, the case was pursued to its conclusion and the rabbis involved were convicted of racial incitement.<sup>17</sup>

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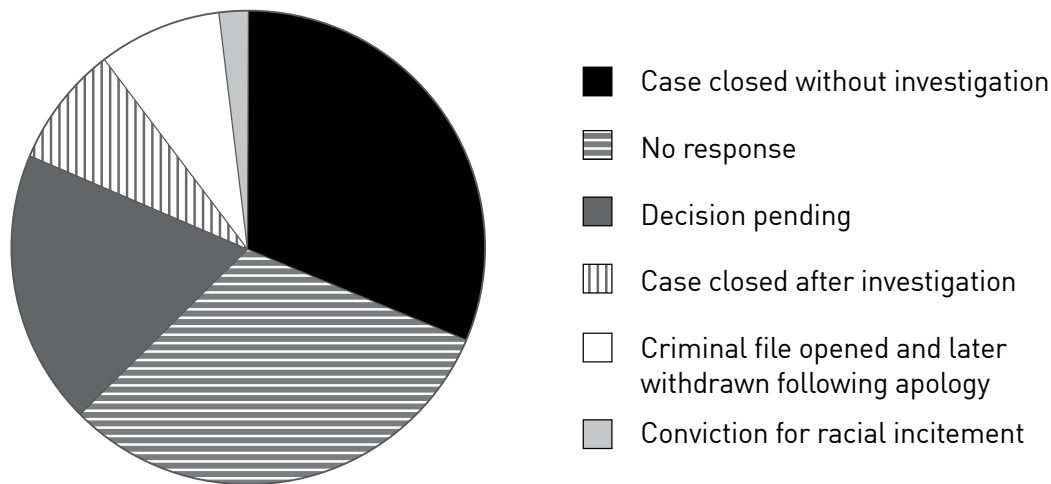
**15.** It should be noted that although five separate cases are reported, three were consolidated in a single indictment against Rabbi Eliyahu. One case involved an indictment against two rabbis. In other words, only four rabbis were indicted.

**16.** Three charges against Rabbi Eliyahu in CC (Jer. Mag.) 1337/06; one charge against Rabbi Yitzhak Ginsburg on account of writing the publication *Root Treatment*, CC (Jer. Mag.) 3297/03.

**17.** The case involved Rabbis Yitzhak and David Batzri, who admitted publishing racial incitement on account of a sermon they gave disparaging Arabs. They gave the sermon during a conference held in the Pat neighborhood of Jerusalem that had been organized as part of an effort to prevent the establishment of a bilingual school for Jews and Arabs in the neighborhood. The following is a selection of the comments they made: “The Arabs are a donkey people. They’re bad news, the Devil, the plague. The question arises why God did not create them on all fours, since they are donkeys. Well, the answer is that they have to build and clean. But they need to understand that they are donkeys... The Arabs are donkeys and animals. They are inferior. What do they want? To take our daughters. People say we are racist. Well, they are the evil ones, they are the cruel ones. They are infected by the filth of the snake. There is pure and impure, and they are impure.” From: Shlomo Tzenza, *02net* (Jerusalem Online), January 9, 2006.

In conclusion, of 48 complaints relating to racial incitement filed between 2002 and August 2011, an indictment was served against just four rabbis (relating to five cases), and of these indictments, just one led to conviction. In this single case, only one of the rabbis involved was penalized. The other admitted to committing the offense, and the court ruled that he was guilty but did not convict because of his advanced age.

The following chart summarizes the data relating to investigations and criminal proceedings in cases of rabbinical incitement:



Although the data in our possession is incomplete, a review of court rulings included in legal databases shows that cases of racial incitement are enforced more rigorously when the cases do not involve rabbis. IRAC examined criminal cases that reached the courts from the time of Prime Minister Rabin’s assassination to the present day. We looked at cases involving crimes of: racial incitement under Article 144B of the Penal Code; incitement to violence under Article 144D of the Penal Code; sedition under Article 136 of the Penal Code; and support of a terror organization under Article 4 of the Prevention of Terrorism Ordinance. The study found that indictments were filed in 39 cases. In 19 cases, indictments were filed for the crime of racial incitement; ten indictments were filed for the crime of incitement to violence; four indictments were filed for the crime of sedition; and 20 indictments were filed for the crime of supporting a terrorist organization.

Regarding the instances of racial incitement, prosecution was on account of statements such as “Death to Arabs;”<sup>18</sup> “Kahane was right! Expel Arabs!;”<sup>19</sup> and “No Arabs, no terror attacks.”<sup>20</sup> Other cases related to more complex texts reflecting a clear world view: “When the Galilee, the “Triangle” area, Jaffa, Haifa, Nazareth and the Negev are on fire...; when everyone realizes that the Arab members of Knesset are a fifth column...; when no leader has any solution for the Arab problem...; let us remember Rabbi Meir Kahane, may God avenge his blood, who warned 25 years ago of the Arab time bomb among

**18.** CC (Jer.) 3709/02, *State of Israel v. Yosef Cohen*, Nevo (2004); CC (Jer.) 3769/03, *State of Israel v. Shmuel Tahan*, PM 5764(3) 713 (2005); CC (Jer.) 2065/08, *Itamar Ben Gvir v. State of Israel*, Nevo (2008).

**19.** CC (KS) 2110/03, *State of Israel v. Chaim Pagiri*, Nevo (2005).

**20.** CC (Jer.) 3855/02, *State of Israel v. Aharon Yirmiyahu*, Nevo (2003); CC (Jer.) 3360/02, *State of Israel v. David Ha’ivri*, Nevo (2004); CC (Jer.) 4066/07, *State of Israel v. Neria Ofen*, Nevo (2009); CA Ben Gvir, note 18 above; CC Pagiri, note 19 above.

us and unequivocally stated that there is only one solution – Arabs out.”<sup>21</sup> “Since the entire Arab street supports suicide bombs, they are all accomplices in this matter. If they do not obey the ultimatum to leave, without their property and while they are alive, we should simply ‘bring planes down and bomb them and protect our land.’”<sup>22</sup>

Some of these statements, which resulted in the indictment of those who made them, are similar in content and message to statements made by rabbis who were not indicted. It is also worth noting that a significant proportion of these cases involve young people who committed a single act (such as shouting “Death to Arabs” in a soccer stadium). The law enforcement system pursued proceedings against these defendants, defendants who lack any public status or influence, yet declines to do so in the case of rabbis who, by virtue of their office, enjoy significant influence on the public.

**The time expended by law enforcement in evaluating cases of rabbinical incitement** is also exceptional. With respect to complaints of rabbinical incitement filed between 2002 and 2011, the average time from filing of a complaint to the decision to open a police investigation was six months. This includes cases in which the decision whether or not to open a police investigation was taken after 16, 14, nine, and, in some cases, eight months.

Of those cases approved for police investigation (from complaints filed between 2002 and 2011), the average period of time between the opening of the investigation and the decision in the case (whether to close the case or file indictment) was 20 months. Processing was more protracted when it was decided to close the case – an average of 23.5 months (between seven and 37 months) between opening the investigation and closing the case. Cases in which it was decided to indict were less protracted – 15 months on average (between 12 and 17 months).

Of cases still under police investigation, it is interesting to note the length of processing. Five cases opened in 2008 remain open, and the investigations have not yet been completed. In the case of the book *The King’s Torah*, the investigation was opened before August 2010 and has not yet been completed (15 months as of the date of publication of this report). By comparison, the decision regarding a complaint of racial incitement by broadcaster Gabi Gazit was taken in just a few days.<sup>23</sup>

**The grounds for the closure of cases** can be divided into various categories: absence of intent to incite to racism, i.e. absence of a sufficient psychological foundation; failure to meet the legal definition of “racism;” or cases in which the grounds for closure are unclear.

Regarding the psychological foundation, the offense of racial incitement requires a special psychological foundation (*mens rea*) of “intent to incite to racism.” The “ordinary” level of intent in criminal law, i.e. intent to commit the offense – in this case, to publish the content itself – is not sufficient. Since it must be proved that the person involved intended specifically to make a racist publication, in many cases complaints are closed on the grounds that the reason for the publication was not to incite to racism, but some other reason. In ten cases, or 20.8% of cases in which a complaint was filed, the case was closed (either before or after a police investigation) on the grounds of lack of intent to incite to racism. Salient examples of this category include the publication of calls against joint Jewish-Arab events or against fraternization between Jews and Arabs. Although the posters or statements are worded in very forceful terms and warn people against any commercial or social

21. CA *Ben Gvir*, note 18 above.

22. CA (Jer.) 4437/06, *State of Israel v. Elisheva Federman*, Nevo (2008).

23. The incident occurred on April 21, 2010, and as early as April 29, 2010, a representative of the Attorney General announced that a police investigation would not be opened. This emerges from the ruling in HCJ 4300/10, *Moshe Shoreq v. Attorney General*, Nevo (2011).

contact with Arabs, the grounds for closing these cases were that the intention was found to be the desire to prevent assimilation, rather than to incite to racism. In other words, the Attorney General took the position that while the publishers did intend for their call to lead to hostility and hatred between sectors of the population (part of the legal definition of racism), that motive was coupled with a legitimate, religious desire to prevent assimilation, and thus, the latter element nullified the original motive. Such legal reasoning effectively grants immunity to the religious motive at the early stage of examining the foundations of the offense. An absurd illustration of this was a demand by rabbis in Bnei Brak and Ashdod not to let apartments to Arabs and migrant workers. It was found that this call was not racist since the statements were made against both Arabs and migrant workers, and accordingly, the goal was “to prevent assimilation of any type.” In other words, a call against Arabs alone might have been considered racism, but since the authors incited against two populations, this negates the offense.

In three of the cases in which complaints were filed on account of rabbinical incitement, the grounds stated for closing the case were vague. One response, for example, declared that “proceedings are not to be commenced, among other reasons, on account of the prosecution’s general policy of restraint regarding offenses that erode the principle of freedom of expression.” In five cases, no reason was stated for closing the file.

In four cases, or 8.3% of cases in which a complaint was filed, the case was closed due to the absence of the foundations of the offense. For example, in the case of a conference urging Jewish young women not to date young Arab men of Bedouin origin, the decision stated that it was doubtful whether Bedouins constitute an “ethno-national origin” or “race.” In the case of posters published by rabbis opposing the letting of apartments to migrant workers and persons unlawfully present in Israel, it was determined that the posters were not racist, since these populations are not covered by the definition of “color or racial affiliation or ethno-national origin.”

It should be noted that cases of rabbinical incitement are closed when the enforcement authorities believe that the circumstances do not amount to a criminal offense, rather than because of a lack of evidence or because the suspect was not involved in the event. Accordingly, these cases are characterized by a professional value judgment on the part of the decision-maker,<sup>24</sup> who chooses to interpret the offense in a highly restrictive, and hence lenient, fashion. This restrictive definition means that the decision-maker is not convinced of the justification for prosecution, and supports his or her decision by claiming an absence of specific intention on the part of the rabbi to incite to racism.

In none of the cases studied did the State claim that the case was closed because the suspected publication quoted religious writings (an exception to the offense). Accordingly, the Attorney General does not (at least officially) make use of the “exception” clause relating to incitement on religious grounds. Cases of rabbinical incitement are closed in the preliminary stages, before the Attorney General has been convinced that an offense has been committed. As noted, however, the aspect of the religious motive behind the inciting publication is considered at an even earlier stage – when deciding whether an offense is present or not. The small number of cases in which the grounds for closing are provided in detail suggest that the fact that the person publishing the content is a rabbi leads the enforcement authorities to determine that he had a “legitimate” religious motive, instead of the obvious motive of fomenting hostility against a different population group.

In any case, it can clearly be seen that incitement based on religious grounds, or employing

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**24.** This person is ostensibly the Attorney General. However, cases reach the Attorney General together with the expert opinion of the senior prosecutor assigned to cases of incitement.

religious principles, enjoys almost complete immunity. This contrasts with racial incitement not based on religious grounds or principles, which is publicly condemned and, in many cases, criminalized.

## Racism and Halacha

The Torah commands Jews to love the resident stranger who lives in Israel: “The stranger who dwells among you shall be to you as one born among you, and you shall love him as yourself; for you were strangers in the land of Egypt: I am the Lord your God.” (Leviticus 19:34). The Torah also forbids the unfair treatment of the stranger: “You shall neither mistreat nor oppress a stranger for you were strangers in the land of Egypt.” (Exodus 22:20). This admonition is repeated 36 times in the Torah – more than any other prohibition. In a series of contexts, the Torah warns us not to mistreat, pressure or exploit the stranger, and to ensure he enjoys a fair trial. In the Torah portion *Mishpatim*, the prohibition against mistreating the stranger is phrased in the singular, whereas in the portion *Kedoshim*, the prohibition begins in the singular and ends in the plural: “For if a stranger lives with you [singular] in your land, you [plural] shall not mistreat him.” Rabbi Shimshon Raphael Hirsch, a nineteenth-century German rabbinic scholar, suggested that the singular refers to the state, while the plural underscores the obligation incumbent on all citizens in their relations with strangers in their midst:

*There it says “you [singular] shall not mistreat the stranger,” and this is essentially a warning to the state not to commit the error of mistreating the stranger; the stranger is not to be disfavored relative to the citizen in terms of rights and obligations. But here, it says “you [plural] shall not mistreat,” in the plural, and this is a warning to all sections of the national society: Do not let him feel his strangeness in the civil relations in society.*

(Rabbi Shimshon Raphael Hirsch, *Commentary on the Torah*, Leviticus 19:33-34).

Elsewhere, Rabbi Shimshon Raphael Hirsch explains that the repetition in the Torah of the prohibition against mistreating the stranger is intended to warn against the temptation to exploit those who lack power and influence, against the background of the historical experience of the People of Israel as slaves in Egypt:

*The dignity of the human and the citizen and human and civil rights are not dependent on the individual’s pedigree, homeland and possessions, nor on any external and random fact that does not stem from the primary essence of the man; they are dependent solely on the spiritual and moral value of the man’s personality. The special reason – “for you were strangers in the land of Egypt” – seeks to protect this rule against any injury... Your whole misfortune in Egypt was that you were “strangers” there, and, as such, you were not entitled, as the peoples of the world saw it, to a nation, a homeland, an existence, and they could act as they saw fit in your regard. As strangers, you were denied rights in Egypt, and this was the root of the slavery and torture imposed on you. Accordingly, be careful – and here comes the language of warning – lest you found human rights in your state on any foundation other than the pure humanity that rests in the heart of every human per se. Any denial of human rights will open the gate to the arbitrary and abusive treatment of the human – the very root of the disgrace of Egypt.*

(Rabbi Shimshon Raphael Hirsch, *Commentary on the Torah*, Exodus 22:20).

Accordingly, the prohibitions in the Torah against mistreating the stranger constitute a warning to the Jewish people to treat strangers with decency and to refrain from harming them because of

their strangeness.

The comments made by rabbis as quoted above in this report do not reflect this approach. On the contrary: the rabbis quoted in this report use the Torah literature to support a political approach that views strangers and the other as a threat.

Halachic interpretation of the Torah is an ancient endeavor. As a sacred text, the Torah has been interpreted by sages throughout the generations. The dispersal of the Jews into Exile and the need to cope with differing life circumstances led to diverse interpretations of the Jewish sources, as acknowledged in the traditional saying “the Torah has seventy faces.” This combination of a sacred but not unambiguous text with a lively tradition of interpreting and understanding this text over thousands of years has yielded a tremendous, diverse and sometimes contradictory repository of interpretations and rulings. The decision by rabbis and *poskim* (adjudicators of Jewish law) to prefer one interpretation over another reflects the circumstances of their own lives, the realities they face, the surrounding cultural norms, and also, of course, their own personalities.

An examination of the Halachic underpinnings behind the racist statements quoted in this report reveals that they ignore the repeated commandment to love and care for the stranger. They also ignore alternative interpretations of the verses they quote in order to justify discrimination against Arabs. These writers consciously and deliberately select interpretations that express an unfavorable approach to the other, apply these interpretations to the present day, and transfer the negative message to modern populations such as Arabs or migrant workers. At each of these stages, an active choice is made to use the Jewish sources to promote messages of hatred, discrimination, exclusion and enmity.

## For the Sake of Peace

Numerous religious rulings express the aspiration that the Jewish people, thanks to its sacred character, will adopt moral and decent behavior toward others. A well-known example of this is the following ruling from the Babylonian Talmud (*Gittin* 61a):

*The poor of the gentile are not prevented from gathering gleanings, forgotten sheaves and the corner of the field, for the sake of peace. Our Rabbis have taught: ‘We support the poor of the gentile along with the poor of Israel, and visit the sick of the gentile along with the sick of Israel, and bury the poor of the gentile along with the dead of Israel, for the sake of peace’.*

In recent generations, this ruling has been interpreted in different ways. Some *poskim* understood the reason “for the sake of peace” as a temporary edict intended to prevent harassment and tension between Jews and gentiles, particularly under gentile rule. Others, however, viewed it as a moral ground that seeks to promote values of peace and mutuality between Jews and gentiles, despite their fundamental differences in faith and belief in God. In *Defining the Paths of Peace*, Tribe from Judah, Part 3, Rabbi Unterman<sup>25</sup> argues that this phrase has its origins in the Bible: “Its paths are paths of peace” (Ecclesiastes 3:17). Rabbi Unterman argues that the guiding principle of the Torah is peace among all humans – not a temporary and utilitarian manipulation based on the interests of the Jewish

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<sup>25</sup>. The second Ashkenazi Chief Rabbi of the State of Israel.

people. According to Rabbi Unterman's approach, any ruling in the spirit of the Torah must aspire to make peace among all humans.

## The Status of Arabs in Israel as “Resident Strangers”

In many cases, the non-egalitarian or reticent attitude in the sources toward gentiles is based on fear of the possible spread of idol worship: “For they will turn your son away from following me **to serve other gods**” (Deuteronomy 7:4); “They shall not dwell in your land **lest they make you sin against me**” (Exodus 23:33). Moreover, the sages associated idol worship with a deteriorated moral climate – idol worshippers murder and commit adultery and other offenses. This explains the strict rulings limiting the relations between Jews and “worshippers of stars and signs” (popularly referred to as *akum* in Hebrew) (i.e. idol worshippers or heathens), including the permit to discriminate against them. However, as early as the thirteenth century, Rabbi Menachem Ben Shlomo HaMeiri explains that this is a phenomenon that has already passed from the world: there are no longer heathens of low morality who live without any code whatsoever. His ruling applies far more forcefully in the case of Arab Israeli citizens – Muslims and Christians who believe in organized religions based on legal codes, to use Hameiri's definition. In any case, there is no dispute that Arab Israeli citizens are not idol worshippers.

From a Halachic perspective, in order to determine the nature of the relations between Jews and Arabs in Israel, it must first be examined to what Halachic category Arab residents of Israel belong. Most poskim agree that the “Ishmaelites” are “resident strangers.” A “resident stranger” is a gentile who is permitted to dwell in the land of Israel. Jews are obligated to treat the resident stranger with love and with decency and honor: “The stranger who dwells among you shall be to you as one born among you, and you shall love him as yourself; for you were strangers in the land of Egypt: I am the Lord your God” (Leviticus 19:34). In the Talmud (*Avodah Zarah* 64b), three definitions are offered for this category. The sages follow the following opinion: “Who is a resident gentile?... And the sages say: Any person who accepts the seven commandments undertaken by the children of Noah...”<sup>26</sup>

Similarly, in Chapter 10, Halacha 6 of his *Laws of Idolatry*, Maimonides rules that “when the hand of Israel is strong on them [the idol worshippers], we must not permit them among us... if he accepts the Noahide commandments, as it is written, ‘they shall not dwell in your land,’ not even for an hour, **but if he accepted the seven commandments, then he is a resident stranger...**” In his original interpretation of *Makot* 9a, Rabbi Yom Tov Asevilli, the “Ritva” (who lived and wrote in Seville in the late thirteenth and early fourteenth centuries), offered a similar ruling and even expanded the obligations incumbent on Jews toward the resident stranger: “... a resident stranger is one who has undertaken in a Jewish rabbinical court (Beit Din) to observe the seven commandments given to the children of Noah, as quoted in *Avodah Zarah* 64b, and, as such, he is permitted to dwell among us and is to be called a resident, and since he accepted these in a religious court, regarding the seven Noahide commandments he is called (considered) commanded and performing (he must perform these commandments), and hence **we are**

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**26.** The commandments given to the sons of Noah are detailed in *Tosefta Avodah Zarah* 8:4: “Concerning seven commandments were the children of Noah commanded: on setting up courts of justice, idolatry, blasphemy, fornication, murder and thievery...” Although this section of the tractate mentions only six commandments, the continuation of the tractate also mentions “a limb torn from a live animal.” The same tractate also presents two dissenting opinions. Rabbi Meir offers the definition “anyone who undertakes before three peers not to commit idol worship,” while others state: “this is a gentile who eats unclean animals [but] whose has undertaken to keep all the commandments of the Torah, apart from the eating of unclean animals.” These two positions represent extreme points on the scale: According to Rabbi Meir, the resident stranger is a full-fledged gentile who has merely renounced idol worship; according to the others, he is almost a Jew, apart from the matter of eating unclean animals.

**commanded to sustain him**, as it is written “that he (your brother) may live with you” (Leviticus 25:35), and it does not need to be said that **it is prohibited to cause him to be killed or to place him in a well.**” Rabbi Shlomo Yitzchaki, born in eleventh-century France (and universally known as Rashi) defines the obligation incumbent on the Jews in *Arakhin* 29a, 4:5: “That Israel is commanded to sustain a resident stranger who has undertaken not to worship idols but who eats unclean animals.”

The above discussion clearly shows that the “resident strangers” are a class of people who are not Jewish, but who are also not idolaters, and who are committed to the seven Noahide commandments. According to this definition, Arab Israelis are resident strangers or, at the very least, they are committed to the Noahide commandments. As such, they are to be permitted to reside in the land, and Jews are required, if not to sustain them, then at the very least not to harm them.

In his *Responsa* (para. 448), Maimonides explicitly rules that “the Ishmaelites are not idol worshippers at all, and this has already been uprooted from their mouths and hearts, and they worship only Almighty God with a proper and unblemished monotheism...” Similarly, Rabbi Yoel Ben Shmuel Sirkis (writing in sixteenth- and seventeenth-century Poland and known by his major halachic work *Bayit Chadash*) writes in his commentary on the *Shulchan Arukh, Choshen Mishpat*, para. 249: “(B) It is forbidden to give a gift for nothing to an idol worshipper. The Beit Yosef wrote that this does not apply to Ishmaelites or to a resident stranger, i.e. one who has accepted the seven Noahide commandments and whom we are commanded to sustain, but all other gentiles share the one rule as stated, end of quote, and according to his (Beit Yosef’s) comment, it is difficult to write to an idol worshipper and mislead people, with the exception of Ishmaelites.”

These commentaries clearly show that the “Ishmaelites,” who are identified as modern-day Arabs, are not considered idol worshippers, but people who have accepted the seven Noahide commandments. Accordingly, Jews are obliged to apply the commandments of the resident stranger to them, to sustain them, and to refrain from harming them. It is therefore apparent that to apply the religious laws regarding idolaters to Arabs is to distort the natural Halachic interpretation, and reflects an ideological and value-based choice on the part of the rabbi authoring such views.

## The Rabbis’ Letter

The signatories of the document known as the “Rabbis’ Letter” establish an unequivocal prohibition against selling or letting a home or field in the land of Israel to a non-Jew. This grave prohibition is based, they argue, on the latter part of Deuteronomy 7:2, which is usually translated in English as “... you shall not show them mercy,” but which has also traditionally been interpreted as “you shall not give them camp.” The letter goes on to claim that the Torah warns against the evils caused by the stranger who dwells among us in the form of intermarriage. Moreover, the rabbis who signed the letter argue that a person who sells or lets property to a non-Jew damages the value of the entire neighborhood, both in terms of property prices and in terms of the quality of life. The quality of life of the Jewish residents is supposedly impaired since the non-Jews live in a different manner “and some of them hate us and seek to harm us to the point of mortal danger.” Accordingly, the rabbis claim a double prohibition – one between man and God (the prohibition against intermarriage and the potential for apostasy), and between man and his fellow (the financial damage to neighbors and the impairing of their quality of life).

This ruling is based on a number of sources which may be divided into three categories: citations from (1) the **Torah** (Deuteronomy 7:2, 4; Exodus 23:33; Numbers 33:55); (2) **Maimonides**, *Mishneh Torah, Hilchot Issurei Bi’ah* 12:6; and (3) the **Shulchan Arukh, Yoreh De’ah**, 151, 344 43.

In their original context, the verses quoted from the Torah refer to the period when the Children of

Israel entered the land: “When God brings you to the land.” The commandment “you shall not give them camp,” like the other verses quoted in the letter – “For they will turn your son away from following me” (Deuteronomy 7:4); “They shall not dwell in your land lest they make you sin against Me” (Exodus 23:33); and “They shall harass you in the land where you dwell” (Numbers 33:55) – refers to the former residents of the land who lived there before the Children of Israel left for Egypt. Moreover, both in Deuteronomy 7 and in Exodus 23, the Torah specifically mentions those peoples referred to (the “seven gentile nations”) by name or, as in Numbers, mentions that the reference is to those who live in the land before the Children of Israel:

*When the Lord your God brings you into the land which you go to possess, and has cast out many nations before you, the Hittites and the Girgashites and the Amorites and the Canaanites and the Perizzites and the Hivites and the Jebusites, seven nations greater and mightier than you, and when the Lord your God delivers them over to you, you shall conquer them and utterly destroy them. You shall make no covenant with them nor show mercy to them. Nor shall you make marriages with them. You shall not give your daughter to their son, nor take their daughter for your son. For they will turn your sons away from following Me, to serve other gods; so the anger of the Lord will be aroused against you and destroy you suddenly. (Deuteronomy 7:1-4).*

It is also apparent from the text that these nations are idol worshippers: “For they will turn your sons away from following me, **to serve other gods**” (Deuteronomy 7:4); “You shall not bow down to their gods, nor serve them” (Exodus 23:24); “Destroy all **their engraved stones, destroy all their molded images**, and demolish all their **high places**” (Numbers 33:52).

There is no need to draw an analogy between these specific peoples, whom our sages state no longer exist, and Arabs who live in modern-day Israel. While the manner in which Arabs worship God may differ from that of the Jews, they can hardly be considered idol worshippers. The fact that the peoples mentioned in these verses are pagans distances them still further from Muslims, who believe in one God. As noted, Maimonides also states that Muslims are not idolaters.

The Rabbis’ Letter quotes Deuteronomy 7:4. However, the preceding verse states: “Nor shall you make marriages with them. You shall not give your daughter to their son, nor take their daughter for your son.” In this context, it is clear that the following verse (“**For they will turn your sons away from following me**, to serve other gods; so the anger of the Lord will be aroused against you and destroy you suddenly”) expresses concern that intermarriage will lead to apostasy (“to serve other gods.”) Such prohibited marriages are referred to in the Rabbis’ Letter as “desecration of God’s sanctity,” a phrase coined by Maimonides. In his Mishneh Torah, Issurei Bi’ah 12:6, Maimonides compares the Cuthites to idol worshippers and condemns sexual relations with them, even in the framework of marriage.

According to the traditional sages, the Cuthites are indeed idolaters; although they ostensibly converted to Judaism, they combined their new faith with their former rituals even after their conversion. Yet Maimonides himself states that the Muslims are not to be considered idolaters, as we have seen. Accordingly, it is evident that the ancient prohibition against letting property and fields no longer serves the purpose for which these prohibitions were established in the Torah – preventing apostasy. The contemporary use of this prohibition by the rabbis who published the letter is intended to promote ideological goals and specific political arrangements regarding the relations between Jews and Arabs in the State of Israel.

Even if one accepts the approach of the signatories to the letter, there is no prohibition against

selling fields or homes in Israel that are not in Jewish neighborhoods. *Shulchan Arukh* 151, which is quoted as an authority for the prohibition against selling or letting homes in Jewish neighborhoods to non-Jews, relates specifically to idolaters, and not to the followers of monotheistic religions. Moreover, the *Shulchan Arukh* itself permits the letting of such properties even to idolaters: “They are not to be sold homes and fields in the land of Israel; **but they are to be let homes**, though not fields. And in Syria, they are sold homes and let fields. And outside the land, they are sold both.” (*Shulchan Arukh, Yoreh De’ah*, 151 section 8).

The quote in the letter regarding financial liability and ostracizing again refers to idolaters:

*For 24 things a person is ostracized, namely: ... (8) One who sells his land to an **idol worshipper** is ostracized, and remains so until he removes the idol worshipper, even if it costs him great amounts of money (*Shulchan Arukh, Yoreh De’ah, Laws of Taboo and Excommunication*, 334:43).*

## The King’s Torah

*The King’s Torah* is another prominent example of a publication presenting a racist worldview ostensibly based on Halachic sources. Written by Rabbi Yitzhak Shapira and Rabbi Yosef Elitzur, *The King’s Torah* is a lengthy Halachic treatise extending over more than one hundred pages, devoted to the origins of the prohibition against killing a gentile in times of peace and in wartime. Through a systemic Halachic discussion, the authors remove any dimension of sanctity from gentile life, permitting the killing of gentiles in most cases. The authors reflect the approach that the killing of gentiles is permitted by the Halacha, regardless of the morality of the action, and that opposition to such acts is based on moral and originally non-Jewish grounds.

The first chapter of *The King’s Torah* lays the foundation for the rabbis’ outrageous rulings, which are compatible neither with the spirit nor the letter of the Torah.<sup>27</sup> According to Maimonides and most of the medieval biblical commentators,<sup>28</sup> the prohibition in the Ten Commandments “You shall not commit murder” does not refer to gentiles, but applies only among Jews. However, there is also a prohibition in the Torah against killing a gentile. Noah and his children are told: “Whoever sheds man’s blood, by man his blood shall be shed; for in the image of God He made man” (Genesis 9:6). For some reason, the authors of the book consider this commandment inferior to “You shall not commit murder,” and consider gentile life inferior to that of Jews.

The authors of *The King’s Torah* intentionally ignore the fact that the command in Genesis is a basic and fundamental principle granted to humanity as a whole, without exception. In their work, they do not reference the creation of the first human in God’s image as a source for the sanctity of human life. Nor do they refer to verse in the Mishna (*Sanhedrin*, 84b): “For this reason man was created alone, to teach that whoever destroys a single soul is considered as if he had destroyed an entire world.” To exclude gentiles from the prohibition “You shall not commit murder,” the authors of *The King’s Torah* draw on a source from *Mekhilta De Rabbi Yishmael, Mishpatim – Masekhta De Nezikin*, 4. The source asks the following question: How could it be that all humans were forbidden to commit murder,

<sup>27</sup>. For a detailed Halachic discussion presenting an alternative approach of Jewish religious law, see: Ariel Finkelstein, *The King’s Way, Racism and Discrimination against Gentiles in the Halacha – A Halachic and Meta-Halachic Alternative to The King’s Torah* (Publication of Yeshivat Hesder Ahavat Yisrael, Netivot, 5772-2010).

<sup>28</sup>. For a dissenting view, see: Rabbi Avraham Ben Natan, *Baba Kama* 113a: “You shall not commit murder, not of a Jew and not of a gentile.”

and the Torah then exempts Jews from liability for the murder of gentiles?

*But if a man acts with premeditation against his fellow to kill him by treachery, you shall take him from my altar, that he may die. "His fellow" excludes others. Isi Ben Akiva says: Prior to the giving of the Torah, we were commanded against bloodshed, and after the giving of the Torah, rather than the prohibition being made stricter it was made more lenient? Truly, they replied, human law does not apply to him, and his case is transferred to the Heavens.*

Contrary to the approach of Rabbis Shapira and Elitzur, one can read the same text and understand that the Torah actually adopts a stricter approach to a Jew who kills a gentile: his penalty is transferred from the human domain to the superior and graver domain of Heaven. According to the sages' approach, death by a decision of the court constitutes atonement for the sin,<sup>29</sup> whereas a person who incurs the Divine death penalty is not pardoned thereby. Moreover, since a Jew who kills a gentile is subject to Divine justice, such a person not only violates the prohibition against bloodshed but also desecrates God's name, thereby impairing his or her own destiny and covenant with God.

*The King's Torah* also includes various Halachic reservations and approaches that are questionable not only on moral grounds but because of their biased and manipulative use of rabbinic literature. For example, in the fourth chapter, the authors conclude that the fact that the rabbis permit the killing of a fetus to save the life of a woman in labor serves as proof that it is permissible to save a Jewish life by killing a gentile. The authors' reference to Rashi in this context is even more outrageous. Rashi explains that until the fetus has come into the world, it is not considered a soul, and accordingly, it may be killed in order to save its mother. The authors' use of this ruling reveals their perception of gentiles as humans without souls. Maimonides, who specifies that a fetus endangering its mother may be considered a "pursuer" (*rodef*) in Halachic terms, and Rashi himself, both consider the fetus to be akin to a limb of the mother's body that presents an immediate and direct danger to the entire body. The authors of *The King's Torah* seek to deduce from this reasoning that killing a gentile is permissible in order to save a Jewish life.

In an effort to support their lenient approach to the taking of the life of a gentile, the authors of *The King's Torah* depict most gentiles as lax in observing the seven Noahide commandments or as not observing the Noahide commandments at all. No evidence is presented as the basis for this assertion, and neither is the claim consistent with reality. All the monotheistic religions, among them Christianity and Islam, include the "Noahide commandments" as an important component of their religious beliefs. Maimonides explicitly states that Muslims believe in one God, and he rejects any classification of them as idolaters. HaMeiri takes a similar approach regarding Christians. By ignoring these rulings, the authors of *The King's Torah* pave the way for granting gentiles inferior status to that of Jews.

Another verse quoted in *The King's Torah* is Deuteronomy 7:2.<sup>30</sup> In his commentary, the thirteenth-century Spanish biblical scholar Rabbi Bechai explains:<sup>31</sup>

**29.** See Mishna, *Sanhedrin* 86b.

**30.** "And when the Lord your God delivers them [the foreign peoples] over to you, you shall conquer them and utterly destroy them. You shall make no covenant with them nor show mercy."

**31.** Detailed mention of the Hebrew vowels in this text has been reworded in order to produce a version comprehensible to a non-Hebrew-speaking reader (*trans.*)

*(B) "Nor show mercy." The Rabbis of blessed memory interpreted this word from the word chen [grace], and from the word chanaya [camping], and from the word chinam [for nought], this in addition to its literal meaning, which is from "pardon," as if He said: You shall not pardon them, as interpreted in tractate **Avodah Zarah** (20a): You shall not pardon them, you shall not give them grace. A person must not say, how handsome is that gentile, for it is written: you shall not pardon them, or as we may read the word – you shall not imbue them with grace, by changing the vowel marks. They also interpreted from there: You shall not grant them camp on the ground, meaning that you must not sell them land in the land of Israel, for this will be a reason for them to settle there, and the Torah says (Exodus 23:33), "They shall not dwell in your land lest they make you sin against me," i.e. you shall not let them camp in the land, again changing the vowel marks. They also interpreted from there: You must not give them a present free of charge, also by changing the vowel mark. From this we learn how great is the strength of the Torah, in that it can address several different reasons in a manner whereby a single word can be interpreted in several ways according to the vowel marks, and as the marks change, so does the word, for the letters are the body and the vowel marks are the soul, as they said: "A dot on the letters of Moses' Torah is like the soul that lives in the human body," and we know that the body has no movement without the soul, and as the soul moves, so the body moves in each direction, and so the letters of Torah change their subject as the vowel marks change. This is why it was essential that the Torah be written without vowel marks, so that the Torah could be interpreted in several ways other than the intention of the verse. This clarifies the greatness of God through His letters, that the subject can change according to the changing vowels. I have already written of this regarding the verse (Deuteronomy 11:15): "If You treat me like this," and the matter should be clear to any intelligent person.*

These comments highlight the ability of the interpreter to select the desired exegesis. However, according to Bechai, he is not limited solely to this interpretation. Bechai argues that by choosing which vowels to apply to a word in the Torah, the interpreter or *posek* brings his own soul into the Torah, and accordingly, the ruling or interpretation usually reflects the *posek's* own essence and faith rather than the content of the verse itself.

We end this chapter with verses from Deuteronomy, as part of Moses' speech to the Children of Israel:

*And now, Israel, what does the Lord your God require of you, but to fear the Lord your God, to walk in all His ways and to love Him... For the Lord your God is God of gods and Lord of lords, the great God, mighty and awesome, who shows no partiality nor takes a bribe, administers justice for the fatherless and the widow, and loves the stranger, giving him food and clothing. Therefore love the stranger, for you were strangers in the land of Egypt. (Deuteronomy 10:12, 17-18).*

In Moses' sermon, made before the Israelites enter the land of Israel, Moses reveals his fear of the potential religious arrogance the people may develop as they dwell in their own land and live a free life. The Chosen People is liable to belittle the minorities in its midst and to feel itself more sacred. The Torah intervenes, emphasizing that the most important and meaningful task of the Jewish people as it follows in the ways of God is to show concern for the weak and the other and to defend their rights.

## **Conclusions and Recommendations**

There has been an alarming rise in recent years in statements by rabbis that express hatred and hostility toward Arabs, as well as calls by rabbis to exclude and discriminate against Arabs, migrant workers and non-Jews. It is claimed that these statements are based on the Halacha. However, it must be recalled that such statements reveal more about their authors or utterers than they do about the Halacha itself. The Torah comprises thousands of verses. The choice to present one verse rather than another is a conscious and deliberate one. The author's decision as to which verses to choose and how to interpret any given verse testify only to his or her own state of mind and beliefs. Unfortunately, however, many mistakenly assume that such statements embody an immutable truth. Thus, rabbis are able to publish racist incitement while evading public and legal criticism on the pretext that their statements are merely a faithful reflection of the Torah. These rabbis choose to use their public office and their dignified titles in order to promote a damaging, and sometimes even unlawful, ideology while ignoring moral, ethical and legal restrictions.

As a general rule, there is no official or systematic response to these statements and publications. The political system does not respond at all or does so only half-heartedly. Law enforcement also remains silent. In the absence of any response that might restrain such comments and mark them as illegitimate, unlawful, or both, rabbis continue to make such comments and to publish rulings against Arabs and migrant workers. Some rabbis are even interviewed by the media or participate in public rallies at which they advocate the discrimination, removal and ostracizing of Arabs or migrant workers. Due to the State's inaction, statements that were once exceptional and illegitimate have become normative.

Some rabbis copy and disseminate the opinions of others, adding their own signatures, while others systematically publish their own racist statements. Those who publish just one statement are ignored by law enforcement, while those who make repeat statements are only rarely the subject of criminal investigation. In the final analysis, the vast majority of instances of racial incitement by rabbis do not meet with any response from the authorities – neither in the criminal nor the disciplinary sphere. Criminal investigations in such cases are commenced long after the event in question and are themselves protracted.

Disciplinary proceedings have never been taken against those rabbis who serve as civil servants and who incite to racism, despite the fact that, in many cases, disciplinary proceedings are an available option for law enforcement. The Minister of Justice, who holds the authority to commence disciplinary action against rabbis, consistently refuses to exercise this authority in response to racial incitement.

The absence of any response within a reasonable period of time strips the prohibitions against racial incitement (both criminal and disciplinary) of any meaning. Over time, the clear message is that it is permissible to incite against Arabs; it is permissible to violate the law and discriminate against Arabs in employment and in renting and selling apartments; it is permissible to call for the expulsion of Arabs from a given city, or from Israel as a whole. All these are treated as legitimate policy demands, rather than as racial incitement. Given the almost total absence of criminal enforcement and the absence of disciplinary enforcement, rabbis continue to make numerous racist comments. The phenomenon has been exacerbated over the past year, since the publication of the Rabbis' Letter.

Indictments are not infrequently served against ordinary citizens who incite to racism and prosecutions are followed through to their completion. This contrasts with the failure, in most cases, to pursue action against rabbis who make very similar comments. The legal system chooses to exercise

the law regarding individuals who lack any public status or influence, while refraining from doing so in the case of rabbis who, by virtue of their position, exert considerable influence over significant sections of the population.

The overall impression is that law enforcement deliberately refrains from addressing this issue, perhaps in the hope that its lack of response will lead to a reduction in the phenomenon or perhaps out of its reluctance to confront the rabbinical establishment and the religious public. The result is the opposite: the past year has seen an increase in the number of racist statements by rabbis and in the frequency of acts of violence against Arabs, both in the West Bank and in the State of Israel (particularly in the Galilee).

There can be no doubt that racism has real-life ramifications, first and foremost in the deterioration of relations between the Jewish and Arab populations in Israel. The purpose of this report, however, is primarily to encourage a serious examination of the role rabbis have played in a process of moral degeneration and in fomenting the discrimination and exclusion of entire populations in the State of Israel.

### **Recommendations:**

- 1)** Criminal enforcement should be intensified, including outlining fixed and mandatory timeframes for processing cases of incitement.
- 2)** A special team should be established to investigate and process cases of incitement in order to accelerate the response to complaints.
- 3)** Criminal law should be exhausted against all suspects on the basis of their actions and regardless of their rabbinical status or title.
- 4)** A disciplinary investigation should take place separately from the criminal investigation in the case of rabbis who are civil servants. This should be undertaken by a separate body, and the decisions in the disciplinary realm should be taken alongside the criminal proceeding and not after its completion.
- 5)** A disciplinary code should be adopted for rabbis who are employed by the religious councils, such as neighborhood rabbis.
- 6)** Legislative amendment – the definition of racism should be extended to include incitement against migrant workers and refugees.
- 7)** Legislative amendment – the definition of incitement to racism should be amended in order to require a regular psychological foundation of awareness of the action. The exemption from criminal liability on account of “quotes from religious writings” should be abolished, and this exception should instead be defined as a defense claim requiring proof.
- 8)** Legislative amendment – civil grounds for claim on account of racial incitement should be established in order to permit civil enforcement following racial incitement, given the paucity of criminal proceedings.

## **Conclusion**

Repeated demands to exclude, deport and even kill non-Jews, particularly Arabs, migrant workers and other “strangers” constitute gross racial incitement. These demands are raised in the name of the Torah and Halacha, distorting Judaism and tainting it with the scourge of xenophobia. The objective of these racist statements is clear: to mark Arab Israelis as enemies; to foment fear; to encourage hatred of “strangers” in general; and to nurture a sense of superiority among the Jewish people.

These instances of racial incitement constitute a public offense committed by religious leaders. This phenomenon is drawing Israel close to the precipice and encouraging hatred of religion and of Judaism. Through their actions, the rabbis not only damage the delicate relations between the different nationalities in Israel and the civil service in which many of them serve, they also damage Judaism itself.







Israel Religious Action Center | Israel Movement for Reform and Progressive Judaism

The Israel Religious Action Center (IRAC) is the public and legal advocacy arm of the Israel Movement for Reform and Progressive Judaism. Since its founding in 1987, IRAC has fought relentlessly to advance pluralism in Israeli society and defend the freedoms of conscience, faith and religion. IRAC is the foremost civil and human rights organization focusing on issues of religion and state in Israel, advocating for a broadly inclusive Israeli democracy, infusing social justice advocacy with progressive Jewish values.

As a Jewish-values based organization, IRAC cannot sit silently by as state-funded rabbis ignite waves of racism and hatred throughout Israel. IRAC uses legal action, advocacy, public policy and grassroots field work to combat racist incitement and to spread the message that racism in the name of Halacha (Jewish religious law) undermines the foundations of Israeli democracy and besmirches Judaism as a whole.

To learn more about IRAC, please visit our website:  
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