



Religious Freedom and Religious Persecution Issues In Israel and the Palestinian Territories

January 2008

This Report was prepared in anticipation of the official visit by the UN Special Rapporteur on Freedom of Religion or Belief to Israel and the Palestinian Territories in January 2008.

European Centre for Law and Justice

4, quai Koch
67000 Strasbourg, France
Phone: +33 (0)3.88.24.94.40
Email: g.puppinck@eclj.org
Website: www.eclj.org

Gregor Puppinck, Counsel
Terrence McKeegan, Counsel

American Center for Law and Justice

201 Maryland Ave., N.E.
Washington, DC 20002
Phone: (202) 546-8890
Email: kwenberg@aclj.org
Website: www.aclj.org

Jay Alan Sekulow, Chief Counsel
Stuart Roth, Senior Counsel
Kris Wenberg, Associate Counsel

We wish to thank the following law clerks for their invaluable assistance with this report:

Tiffany Barrans, Chris Baker, Steve McKinney, Cort Walker, Meghan Terry, David Skarka, Martha Glover, Carrie Loftus, T.J. Dolan, Kim Shaftner, Ben Sisney, Valerie Payne, Matthew Clark, Laura Davids, Matt Sexton, Peter Ritchie and Tyler Weiss

The American Center for Law and Justice (ACLJ) is a public interest law firm specializing in American constitutional law. The ACLJ has participated in numerous cases before the U.S. Supreme Court, Federal Court of Appeals, Federal District Courts, and various state courts regarding freedom of religion and freedom of speech. The ACLJ's affiliate, the European Centre for Law and Justice (ECLJ), is also a public interest law firm that specializes in protecting religious freedom and other human rights at the European institutions as well as internationally. The ECLJ is a non-governmental organization with Special Consultative Status with the UN Economic and Social Council (ECOSOC).



Table of Contents

INTRODUCTION	2
ISRAEL	3
I. Israeli Law of Return: Religion and Citizenship in Israel	3
II. Process of recognition of religious leaders	4
III. Right to build, buy, and operate places of worship in Israel.....	6
IV. Fiscal status of religious communities, including the issue of the Vatican-Israeli bilateral treaty	7
A. Fundamental Agreement Between the Holy See And The State of Israel, December 30, 1993 (“Fundamental Agreement”)	9
B. Status of the Vatican-Israeli Bilateral Treaty: Unresolved Issues	10
C. Current status of negotiations between Israel and the Holy See.....	17
V. Status of conversions	17
PALESTINIAN TERRITORIES	19
I. Legal status of the Christian community in Palestinian Territories.....	19
II. Legal status of the Christian community in Palestine.....	23
A. Fatah and the West Bank.	24
B. Hamas and Gaza.	27
III. Statistics on the emigration of Christians from Palestinian Territories.	29
IV. Status of conversions: The Palestinian government and Hamas regarding religious choice	30
V. Persecution of Christians in Palestine.....	33
VI. Abuse of Christian Property Rights in Palestinian Controlled Areas	36

INTRODUCTION

In this report, the European Centre for Law & Justice and the American Center for Law & Justice examine some of the most pressing issues concerning religious freedom in Israel and the Palestinian Territories, with a special emphasis on the plight of the Christian communities. While important issues remain to be addressed in Israel, the situation there pales in comparison to violence wrought against the Christian minority in the West Bank and the Gaza strip.

The Christian minority living in the “Holy Land” is experiencing significant difficulties and its presence in the Palestinian Territories has been seriously compromised. This Christian minority not only shares the fate of the Palestinian people, but also suffers intolerable pressure from within that population. As a minority within a minority, these Christians are under threat from both sides.

Our organizations understand the legitimate claims of the Jewish and Muslim populations regarding the holy places. However, it is inconsistent to claim the benefit of religious freedom for oneself without ensuring it for the minorities for which one is responsible.

Access to holy places including Bethlehem has become all but impossible for Palestinian Christians. In the Palestinian Territories, a number of Christian schools – which are open to Muslim pupils – have recently been partly destroyed. The Christian communities are subjected to an environment of intolerable pressure which has adverse moral, material and physical consequences. A number of reports refer to cases of enforced conversion.

This pressure is the reason for the wholesale exodus of the Christian populations where less than 30,000 Christians still live in the Palestinian Territories. Bethlehem was 85 percent Christian in 1948, but the current figure is less than 20 percent. Clearly, the Christian community is entitled to live on this land in peace with other religious communities. Unfortunately, its fate has been neglected not only by the local political authorities but also by the international community.

The exodus of these Christians is not only a human and cultural tragedy, but it is also a loss for the Palestinian population and for the stability of the area. By their neutrality in the

conflict, and by their commitment to many works of charity, schools and hospitals, the Christian population is the only "third party" in the conflict. Consequently it is often the only party maintaining a social link between the populations and plays a meaningful role in mediation between Muslim and Jewish populations.

But more than that, the presence of Christians is evidence of the possibility of the coexistence of different religions in this part of the world, and that is why it is necessary to devote particular attention to their plight, to support them, and to ensure respect for their fundamental rights.

We therefore recommend that, as part of the United Nations monitoring of the situation, Christians should be the subject of specific examination, and that the international community should undertake to support their presence in the area, because their presence is essential to the establishment of lasting stability.

ISRAEL

I. Israeli Law of Return: Religion and Citizenship in Israel

The Law of Return reflects the "integration of religion and state in Israel,"¹ demonstrating the Israeli's natural preference for Judaism. This legal provision, originally passed in 1950, provided every Jew the "right" to settle in Israel.² Following a controversial 1969 Supreme Court decision,³ the Knesset passed an amendment to the Law of Return in 1970 that extended this right to the children, grandchildren, and spouse of any Jew.⁴ The definition of a "Jew" under this amendment includes any person who was "born of a Jewish mother" or anyone who has converted to Judaism, so long as they are not a member of any other religion.⁵ Thus, the Supreme Court's 1969 *Shalit* opinion sought to expand the meaning of Jewish status from the

¹ Shimon Shetreet, *Freedom of Religion in Israel*, Mfa.gov.il, Aug. 20 2001, http://www.mfa.gov.il/MFA/MFAArchive/2000_2009/2001/8/Freedom%20of%20Religion%20in%20Israel (attached hereto Appendix III-D).

² Law of Return, 5710-1950, § 1, 4 L.S.I. 114 (1949-50) (Isr.), English Translation *available at* http://www.mfa.gov.il/MFA/MFAArchive/1950_1959/Law+of+Return+5710-1950.htm (attached hereto in Appendix I-A).

³ H CJ 58/68 *Shalit v. Minister of Interior* [1969] IsrSC(2) 477 (Isr.).

⁴ Law of Return (Amendment No. 2), 5730-1970, § 4A(a), 24 L.S.I. 28 (1970) (Isr.), English Translation *available at* http://www.mfa.gov.il/MFA/MFAArchive/1950_1959/Law+of+Return+5710-1950.htm (attached hereto in Appendix I-B).

⁵ *Id.* § 4(B).

then-defined statutory provision. Previously, in 1962, the Supreme Court’s opinion in *Rufeisen v. Minister of Interior* specifically denied the right of return to those people who had once been Jewish, but then voluntarily changed their religion⁶—an element still expressed in Israeli statutory law.⁷

Some view the religious aspect of the Law of Return as a religious test applied to those seeking naturalization in Israel,⁸ but this is true only to the extent that a favorable religious status expedites or guarantees citizenship. Even within the law of “return” lies a relatively secular component: offspring and spouses are viewed as legitimate Jewish religious adherents. Moreover, a purely secular test (i.e., the “normal” immigration and naturalization application process) is applied to all non-Jewish immigrants. The Law of Return is not the exclusive means of attaining citizenship. In other words, non-Jews are not prohibited from becoming citizens of Israel.

The Nationality Law of Israel recognizes “return” as *one* method by which to acquire Israeli nationality, but also provides that nationality can be obtained through other means, none of which require that a person be of Jewish faith.⁹ Thus, one can be naturalized provided one submits an application, has resided in Israel for three out of the last five years, renounces one’s prior citizenship, is within Israel and entitled to remain, intends to stay, and has “some” knowledge of Hebrew.¹⁰ While the guaranteed Right of Return is limited to those of the Jewish faith and is denied to those who voluntarily converted from Judaism to another religious affiliation, there is no particular faith requirement to become a naturalized citizen. Therefore, one is not required to be Jewish or convert to Judaism in order to settle in Israel or enjoy the protections of citizenship.

II. Process of recognition of religious leaders

The exact legal process for the recognition of religious leaders in Israel does not appear to be readily available in English. A general understanding of the process can, however, be derived from various sources. For example, according to the U.S. Department of State,

⁶ H CJ 72/62 *Rufeisen v. Minister of Interior* [1962] IsrSC 16(1) 2428 (Isr.).

⁷ Law of Return (Amendment No. 2), *supra* note 4, § 4(A)(a).

⁸ Shetreet, *supra* note 1.

⁹ Nationality Law, 5712-1952, 6 L.S.I. 50 (1951-52) (Isr.), English summary *available at* <http://www.geocities.com/savepalestinenow/israelaws/fulltext/nationalitylaw.htm> (attached hereto in Appendix I-C).

¹⁰ *Id.* § 5(a)(1-6).

In March 2004, the Ministry of Religious Affairs was officially dismantled and its 300 employees were reassigned to several other ministries. As a result, the Ministry of the Interior now has jurisdiction over religious matters concerning non-Jewish groups; the Ministry of Tourism is responsible for the protection and upkeep of all holy sites, and the Prime Minister's office has jurisdiction over the nation's 133 religious councils (one Druze and the rest Jewish) that oversee the provision of religious services to their respective communities. Legislation establishing religious councils does not include non-Jewish religious communities other than the Druze. Instead, the Ministry of the Interior directly funds religious services for recognized non-Jewish communities.¹¹

The report indicates that the Ministry of the Interior is now responsible for recognizing the leaders of non-Jewish groups, but does not specify the process or procedures by which the Ministry makes its decisions.

In addition, a recently-resolved dispute over the recognition of the Greek Orthodox Patriarch in Israel further illuminated some of the complexities of the system. When Patriarch Irineos I sold Church property in Jerusalem's Old City in March 2005, the Holy Synod chose to depose him from his position as the Greek Patriarch of Jerusalem and appointed Theofilos III as his successor.¹² In order to officially become Patriarch of the Greek Orthodox Church of Jerusalem, the candidate "must have the blessing of the Holy Land's ruling powers: Jordan, the Palestinian Authority (PA), and Israel."¹³ Although both Jordan and the PA granted official recognition to Theofilos, Israel refused to recognize him.¹⁴ Theofilos appealed the government's decision to the Israeli Supreme Court in November 2005, and the Israeli Government created a ministerial committee to resolve the dispute.¹⁵ Finally, on December 16, 2007, the Cabinet Secretariat released the following statement:

Pursuant to the Ministerial Committee on the Greek Orthodox Patriarch of Jerusalem's 28 October 2007 decision, the Cabinet approved Archbishop Theofilos III as Greek Orthodox Patriarch of Jerusalem in place of Irineos I, as

¹¹ Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *International Religious Freedom Report 2006: Israel and the Occupied Territories* (Sept. 15, 2006), available at <http://www.state.gov/g/drl/rls/irf/2006/71423.htm> [hereinafter *International Religious Freedom Report 2006*] (attached hereto in Appendix II-B).

¹² *Id.*

¹³ Jamal Halaby, *Jordan Drops Blessing of Orthodox Leader*, Associated Press, May 13, 2007, http://www.foxnews.com/printer_friendly_wires/2007May13/0,4670,JordanGreekOrthodoxPatriarch,00.html

¹⁴ *Id.*

¹⁵ *International Religious Freedom Report 2006: Israel and the Occupied Territories*, *supra* note 11.

per the 22 August 2005 decision of the Holy Synod of the Greek Orthodox Patriarchate of Jerusalem.¹⁶

The government approved Theofilos by a vote of 10 to 3.

The Israeli government permits religious organizations to petition for state funding to maintain or build new religious facilities. In the past, the government has provided funding for churches, Orthodox synagogues, mosques, and cemeteries. Reportedly, funding for the construction of new non-Orthodox synagogues was denied.¹⁷

Several civil rights nongovernmental organizations (NGOs) asserted that Orthodox Jewish facilities receive significantly greater proportions of funding than did non-Orthodox Jewish and non-Jewish facilities. Muslim groups complained that the Government did not equitably fund the construction and maintenance of mosques in comparison to the funding of synagogues.¹⁸

III. Right to build, buy, and operate places of worship in Israel

Approximately 93 percent of the land in Israel is publicly-held. Of this 93 percent, the State directly owns the majority of the land, while the Jewish National Fund (JNF) owns approximately 12.5 percent.¹⁹ All public lands and those owned by the JNF are administered by the governmental body, the Israel Lands Administration (ILA).²⁰ Land directly controlled by the State may only be leased.²¹ Thus, Israeli citizens who control land, “either for residential or business use . . . lease[] their land from the Government on long-term leases.”²² JNF land may be leased or sold but only to members of the Jewish faith. In 2005, “the Attorney General ruled the Government cannot discriminate against Israeli Arabs in marketing and allocation of lands it manages, including lands the ILA manages for the JNF.”²³

According to the 2007 *International Religious Freedom Report* on Israel compiled by the US Department of State, “Building codes for places of worship are enforced selectively based on

¹⁶ Israel Ministry of Foreign Affairs, Cabinet Communique, Dec. 16, 2007, <http://www.mfa.gov.il/MFA/Government/Communiques/2007/Cabinet+communique+16-Dec-2007.htm> (attached hereto in Appendix III-A).

¹⁷ *International Religious Freedom Report 2006: Israel and the Occupied Territories*, *supra* note 11.

¹⁸ *Id.*

¹⁹ Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, *International Religious Freedom Report 2007: Israel and the Occupied Territories*, § II (Sept. 14, 2007), available at <http://www.state.gov/g/drl/rls/irf/2007/90212.htm> [hereinafter *International Religious Freedom Report 2007*] (attached hereto in Appendix II-A).

²⁰ *Id.*

²¹ *Id.*

²² *International Religious Freedom Report 2006*, *supra* note 11, § II.

²³ *International Religious Freedom Report 2007*, *supra* note 19, § II.

religion. Several Bedouin living in unrecognized villages were denied building permits for construction of mosques, and in the past the Government has destroyed mosques built in unrecognized Bedouin communities.”²⁴ In 2003 and 2004, the Government destroyed three mosques; all were in unrecognized Bedouin villages and were constructed without the proper permits.²⁵

Churches within Jerusalem, the West Bank, and Gaza fall into one of three categories of legal status.²⁶ Older churches have been legally recognized under the status quo agreements from the Ottoman rule in the 19th Century. The PA respects and officially recognizes the presence and rights of the Greek Orthodox, Roman Catholic, Armenian Orthodox, Assyrian, Syrian Orthodox, Greek Catholic, Coptic, Ethiopian Orthodox, Episcopal, and Lutheran churches under these agreements.²⁷ These groups are allowed to establish ecclesiastical courts that have the authority to rule on “some property matters.”²⁸ Other churches established before 1967, such as the Nazarene Church and some Baptist churches, have unwritten understandings with the PA based on principles of the status quo agreements. They are permitted to operate freely and are able to perform certain personal status legal functions in accord with the Ottoman agreements.²⁹ The final category of churches include Jehovah’s Witnesses and some evangelical Christian groups.³⁰ While these churches have encountered opposition to their efforts to obtain recognition, they generally operate unhindered by the PA.³¹

IV. Fiscal status of religious communities, including the issue of the Vatican-Israeli bilateral treaty

The Declaration of the Establishment of the State of Israel (1948) expressed Israel’s attitude towards religious pluralism by stating:

The State of Israel . . . will be based on freedom, justice and peace as envisaged by the Prophets of Israel; it will ensure complete equality of social and political

²⁴ *Id.*

²⁵ *International Religious Freedom Report 2006, supra note 11, § II.*

²⁶ Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, *International Religious Freedom Report 2007: Occupied Territories*, § II (Sept. 14, 2007), available at <http://www.state.gov/g/drl/rls/irf/2007/90212.htm>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture.³²

The 1948 Declaration includes Israel's "vision and its credo, and adherence to these principles is guaranteed by law."³³ Each religious community has the freedom to observe its own holy days and weekly day of rest, practice its faith, and govern its own internal affairs.³⁴ Furthermore, each community has its own religious council and courts recognized by law, which have jurisdiction over all religious affairs and matters of personal status such as marriage and divorce.³⁵

Israel recognizes several "religious communities" which were carried over from the British Mandate Period. These include Eastern Orthodox, Latin (Roman Catholic), Gregorian-Armenian, Armenian-Catholic, Syrian (Catholic), Chaldean (Uniate), Greek Catholic Melkite, Maronite, Syrian Orthodox, and Jewish.³⁶ Recognition of these particular religions is based on the Palestine Order in the Council of 1922, which the State of Israel adopted, with a few small changes, in 1948. The fact that the Muslim population was not defined as a religious community was a vestige of the Ottoman period when Islam was the dominant religion, and it does not limit Muslims from practicing their faith.³⁷ Since the founding of the country, the Israeli government has recognized three additional religious communities: the Druze (a monotheistic offshoot of Islam) in 1957, the Evangelical Episcopal Church in 1970, and the Baha'i in 1971.³⁸

Over seven million people live in Israel. Approximately 80 percent are classified as Jewish, about 16 percent Muslim, and the remaining people are either Druze, Christian, or not classified by a religion.³⁹ The status of several Christian denominations with representation in the country has been defined by a collection of ad hoc arrangements with various government agencies.⁴⁰ The government allows members of unrecognized religions the freedom to practice

³² Israel Ministry of Foreign Affairs, *Focus on Israel: The Christian Communities of Israel*, <http://www.mfa.gov.il/MFA/Facts+About+Israel/People/Focus+on+Israel++The+Christian+Communities+of+Isr.htm> (last visited Jan. 4, 2008) (attached hereto in Appendix III-B).

³³ *Id.*

³⁴ *Id.*

³⁵ Israel Ministry of Foreign Affairs, *Society: Religious Freedom*, <http://www.mfa.gov.il/MFA/Facts%20About%20Israel/People/SOCIETY-%20Religious%20Freedom> (last visited Jan. 4, 2007) (attached hereto in Appendix III-C).

³⁶ *International Religious Freedom Report 2007*, *supra* note 11, § II.

³⁷ *International Religious Freedom Report 2007*, *supra* note 11, § II.

³⁸ *International Religious Freedom Report 2007*, *supra* note 11, § II.

³⁹ *Id.* § I.

⁴⁰ *Id.* § II.

their religion.⁴¹ However, unlike recognized religious communities, unrecognized religious communities do not receive government funding for their religious services.⁴²

The Arrangements Law—a document “drafted annually to guide government spending”—provides exemption from municipal taxes for any place of worship of a recognized faith.⁴³ Exemption from tax liability is also granted to churches that have not been officially recognized by law.⁴⁴ In several cases, the Israeli government has interpreted that exemption from municipal taxes only applies to that portion of the property of religious organizations that was actually used for religious worship.⁴⁵ Not-for-profit religious schools also receive tax exemptions.⁴⁶

With some recognized exceptions, each recognized religion has its own religious court system, primarily dealing with matters of personal status.⁴⁷ Due to the predominance of religious communities in these matters, members of non-recognized religious communities encounter some difficulties in matters of birth, marriage, divorce, and death, which are mitigated in some cases by informal arrangements.⁴⁸

A. *Fundamental Agreement Between the Holy See And The State of Israel, December 30, 1993 (“Fundamental Agreement”)*

On December 30, 1993, the Roman Catholic Church and the Israeli government signed the *Fundamental Agreement Between the Holy See and the State of Israel*, a document of great significance for the Catholic churches in the Holy Land.⁴⁹ The Fundamental Agreement established full diplomatic relations between the Holy See and the State of Israel.⁵⁰

The Preamble to the Fundamental Agreement states that both parties are aware of the “unique nature of the relationship between the Catholic Church and the Jewish people, and of the historic process of reconciliation and growth in mutual understanding and friendship between

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Fundamental Agreement, Israel-Holy See, Dec. 30, 1993, available at http://www.mfa.gov.il/MFA/MFAArchive/1990_1999/1993/12/Fundamental%20Agreement%20-%20Israel-Holy%20See (attached hereto in Appendix IV-A).

⁵⁰ Israel Ministry of Foreign Affairs, *Israel’s Diplomatic Missions abroad: Status of relations*, <http://www.mfa.gov.il/MFA/About+the+Ministry/Diplomatic+Missions/Israel-s+Diplomatic+Missions+Abroad.htm> (last visited Jan. 7, 2008).

Catholics and Jews.”⁵¹ Various articles of the Agreement address issues such as the observation of “the human right to freedom of religion and conscience,” as described in the Universal Declaration of Human Rights, and the commitment to combating all kinds of racism, religious intolerance, and anti-Semitism.⁵²

In totality, the Fundamental Agreement contains fifteen Articles covering issues ranging from the Catholic Church’s right to carry out religious, moral, educational and charitable functions to the discussion of how unsettled and disputed property, economic and fiscal issues with the Catholic Church will be resolved.⁵³ The Fundamental Agreement left a significant number of issues open for future negotiation between Israel and the Holy See.

B. Status of the Vatican-Israeli Bilateral Treaty: Unresolved Issues

The Fundamental Agreement of 1993 established a Bilateral Permanent Working Commission “to study and define together issues of common interest, and in view of normalizing” relations between the Holy See and the State of Israel.⁵⁴ Certain articles of the Fundamental Agreement, thus, were left open to negotiation. At this time, reports indicate that Israel’s failure to adopt the Fundamental Agreement into Israeli law provides the largest source of contention. These issues are discussed below.

A former Vatican nuncio to Israel, Monsignor Pietro Sambì, has been reported as blaming the State of Israel for “not respecting the commitments it made in [the Fundamental Agreement].”⁵⁵ Monsignor Sambì stated that Israel never implemented either the Fundamental Agreement or the Legal Personality Agreement of 1997 (discussed below), and an economic agreement has not yet been signed as contemplated under the Fundamental Agreement.⁵⁶ According to Msgr. Sambì, the Fundamental Agreement was supposed to resolve three issues: Church property unjustly seized or placed under unjust easement; equal compensation for services provided to the Israeli population, both Jewish and Palestinian, equivalent to those

⁵¹ Fundamental Agreement, *supra* note 49.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Nuncio to Washington says Israel not keeping its promises to the Holy See*, AsiaNews.it, Nov. 16, 2007, available at <http://www.asianews.it/view4print.php?l=en&art=10822>; see also *New plenary meeting (and little hope) in Holy See-Israel negotiations*, AsiaNews.it, Dec. 11, 2007, <http://www.asianews.it/index.php?L=en&art=10822&size=A>.

⁵⁶ *Id.*

offered by state institutions; and tax status previously enjoyed by the Catholic Church before the State of Israel was established.⁵⁷

This report, as well as other recent news reports and commentary, indicate that the resolutions agreed upon in Articles 3, 4, 9, and 10 of the Fundamental Agreement have not yet been resolved, but both parties are currently working on the final resolution of these issues.

1. Article 3

In Article 3, section 3, the parties agreed to negotiate “[c]oncerning Catholic legal personality at canon law . . . on giving it full effect in Israeli law, following a report from a joint sub commission of experts.”⁵⁸ In November 1997, the parties signed the *Legal Personality Agreement–State of Israel-Holy See* (Legal Personality Agreement) pursuant to Article 3(3) of the Fundamental Agreement. In this agreement, Israel agreed to grant legal personality to certain Catholic entities.⁵⁹ Article 6 of the Legal Personality Agreement states that Israeli law will govern “any legal transaction or other legal act in Israel between any legal person and any party.”⁶⁰ However, Article 6, section (b) grants the right to determine Church leadership under canon law.⁶¹ Moreover, “internal ecclesiastical matter[s]” were to be determined “in accordance with canon law, in a judicial or administrative ecclesiastical forum.”⁶²

In 2004, Rabbi David Rosen of the American Jewish Committee commented extensively on the history and purpose of the Fundamental Agreement and diplomatic relations.⁶³ Although neither the Fundamental Agreement nor the Legal Personality Agreement have been adopted into Israeli law, Rabbi Rosen discussed the intent and purpose of the Legal Personality Agreement:

While the Church’s institutions and communities in Israel are indeed subject to the laws of the State, they nevertheless derive their internal authority and structure

⁵⁷ *Id.*

⁵⁸ Fundamental Agreement, *supra* note 49, at art. 3, § 3.

⁵⁹ Legal Personality Agreement, Israel-Holy See, Nov. 10, 1997, available at http://www.mfa.gov.il/MFA/MFA_Archive/1996-1997/Legal%20Personality%20Agreement-%20State%20of%20Israel-Holy (attached hereto in Appendix IV-B). In this agreement, the State of Israel agreed to “assure full effect in Israeli law to the legal personality of,” *inter alia*: the Catholic Church itself, art. 2; certain Patriarchates and Dioceses, Assembly of the Catholic Ordinaries of the Holy Land, and the Holy See states, art. 3(a)-(f); the Custody of the Holy Land, art. 4; Pontifical Institutes of Consecrated Life and other official entities of the Catholic Church, art. 5

⁶⁰ *Id.* at art. 6, § 2(a).

⁶¹ *Id.* at art. 6, §2(b).

⁶² *Id.* at art. 6, § 3(a).

⁶³ See Rabbi David Rosen, American Jewish Committee, *Christian-Jewish Relations, Israel-Vatican Relations Since the Signing of the Fundamental Agreement*, May 2004, available at <http://www.ajc.org/site/apps/nl/content3.asp?c=ijITI2PHKOG&b=846561&ct=1082737> (last visited January 28, 2008).

from Rome. The Vatican sought to have this structure and its authority recognized as such by the State of Israel—something that is arguably without parallel or precedent. However, the juridical agreement [Legal Personality Agreement] did just that and gave legal recognition to the Church’s internal structure, strengthening her control of her own institutions in Israel. This is undoubtedly a historic achievement for the Catholic Church, as no ruling authority in the Holy Land—in particular non-Christian—has ever granted any Church such de jure recognition. In effect, this agreement concerning the Church’s legal status, is recognition on the part of the State of Israel of the Holy See’s historic standing and inherent stake in the Holy Land.⁶⁴

Recently, Rabbi Rosen, who participated in the original negotiations of the Bilateral Vatican-Israel Commission that ushered in the Fundamental Agreement and diplomatic recognition between the Vatican and Israel, summarized the conflict: “The basis for the Fundamental Agreement was the understanding that it would be enshrined in Israeli law as a binding international agreement.”⁶⁵ However, Rosen recalled that in 2004, “the Israeli attorney-general stated in court that the Fundamental Agreement has no binding authority under Israeli law.”⁶⁶ Some now call for the Knesset plenum to ratify the agreements, but others believe that “only intervention at the highest Israeli political level—by the prime minister or the president himself—could solve this issue.”⁶⁷

A large part of the dispute pertains to property rights. In 2005, Franciscan Father David M. Jaeger, a member of the group that drafted the Fundamental Agreement, discussed particulars of some of the properties in dispute:

[T]here is the matter of restitution of some Church properties that have been confiscated. This is the case of the church that existed in Caesarea. Caesarea has a prominent place in the Acts of the Apostles and early Christian history. It was where the Gentiles first received the Holy Spirit. Yet the church there was confiscated in the 1950’s and was later completely destroyed. There is also the case of the convent of Franciscan sisters in Jerusalem that is still obstinately occupied in part by the Hebrew University, a major national institution. The good sisters gave hospitality to the University in 1948 when the University itself was a

⁶⁴ *Id.* (footnote 18 omitted).

⁶⁵ Lisa Palmieri-Billig, *Vatican upset at slow pace on finalizing agreement with Israel*, The Jerusalem Post, Dec. 25, 2007, available at <http://www6.lexisnexis.com/publisher/EndUser?Action=UserDisplayFullDocument&orgId=574&topicId=100012117&docId=1:721414893&start=25> [hereinafter Palmieri-Billig, *Vatican upset at slow pace*].

⁶⁶ *Id.*

⁶⁷ *Id.*

war refugee from its original campus. Now the University has several large, spacious campuses, but it is still refusing to leave the little convent.⁶⁸

Further, according to news reports from June 2006, many sacred Church properties are in jeopardy:

[T]he Church's possession of all sacred places is jeopardized by an Israeli law which reserves jurisdiction to the Executive—i.e. to politicians—in all disputes concerning “religious building or sites.” This means that the Government may arbitrarily deny the Church access to the Israeli courts, and instead decide such cases in accordance with electoral or any other extraneous considerations, rather than in accordance with the laws governing property. In this matter the Church is not asking for privileges, but only for the right of any property owner to have disputes decided in the courts and according [to] the law.⁶⁹

There are no recent reports that would indicate that any of these property disputes have been resolved satisfactorily to both the Holy See and the State of Israel.

2. Article 4

The State of Israel has been accused of violating Article 4 of the Fundamental Agreement with respect to tax exemptions for religious entities.

Article 4.

1. The State of Israel affirms its continuing commitment to maintain and respect the ‘Status quo’ in the Christian Holy Places to which it applies and the respective rights of the Christian communities thereunder. The Holy See affirms the Catholic Church’s continuing commitment to respect the aforementioned ‘Status quo’ and the said rights.
2. The above shall apply notwithstanding an interpretation to the contrary of any Article in this Fundamental Agreement.
3. The State of Israel agrees with the Holy See on the obligation of continuing respect for and protection of the character proper to for and protection of the character proper to Catholic sacred places, such as churches, monasteries, convents, cemeteries and their like.
4. The State of Israel agrees with the Holy See on the continuing guarantee of the freedom of Catholic worship.⁷⁰

⁶⁸ *Father Jaeger: give substance back to accord between Israel and Holy See*, AsiaNews.it, Nov. 11, 2005, <http://www.asianews.it/view4print.php?1=en&art=4603>.

⁶⁹ *Influential US MP tells Bush: let's ask Israel to reach accord with Holy See*, AsiaNews.it, June 20, 2006, <http://www.asianews.it/view4print.php?1=en&art=6485>.

⁷⁰ Fundamental Agreement, *supra* note 49, at art. 4(1)-(4).

Israel has been accused of not keeping this status quo with regard to tax exemptions, however, as Fr. Jaeger explained, the change in tax exemptions was not likely a purposeful act. As reported in the Jerusalem Post in December 2007, Israel imposed new tax regulations with regard to exemptions:

[T]he Israeli government restricted the application of tax exemption statuses. Previously dating back to the British mandate in 1938[,] religious institutions were exempt from paying all taxes including those for services such as garbage disposal[,] utilities[,] etc. Now these services must be paid for[,] although in other respects the Catholic community still enjoys greater tax exemptions than all others.⁷¹

Fr. Jaeger, however, saw the new tax regulations as a careless mistake to be rectified:

[T]he Church was always exempt from local property taxes Yet, in December 2002, shortly after Israel's own Supreme Court had twice confirmed this exemption, the law was very suddenly changed in Israel to take away this full exemption from monasteries and convents and most other Church institutions. This was not the purpose of the law, only an accidental result of a very hastily drafted law, but it needs to be rectified, and the exemption must be restored. Otherwise those institutions might simply not be able to survive.⁷²

Another source of contention pertains to visas for clergy. Israeli visas for priests and nuns are more difficult to obtain than when the Fundamental Agreement was signed. Currently, individual visas are necessary, whereas in the past, group visas were issued.⁷³ In regard to visas, Israel has explained that its concern is one of security, rather than “the will of the Foreign Ministry”: “Israeli authorities recall that the Latin Patriarchate includes priests from Arab countries considered hostile, such as Syria, Lebanon, etc. . . . the government's authority here is very limited.”⁷⁴ The Jerusalem Post notes that a “proposed solution is that the Vatican issue individual bona fide guarantees.”⁷⁵ Israel's Interior Ministry spokeswoman Sabine Haddad stated that Israel is currently trying to “find a solution that make[s] it easier for [the clergy].”⁷⁶

Visas and tax exemptions provide “a few examples of the thorny issues on the table[,] many of which are related to the status quo laws affecting the Catholic Church before the

⁷¹ Palmieri-Billig, *Vatican upset at slow pace*, *supra* note 65.

⁷² *Father Jaeger*, *supra* note 68.

⁷³ Palmieri-Billig, *Vatican upset at slow pace*, *supra* note 65.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Israel rescinds travel privileges of clergy at request of security officials*, Associated Press Worldstream, Oct. 26, 2007, available at <http://www.iht.com/articles/ap/2007/10/26/Africa/ME-GEN-Israel-Clergy.php>.

creation of the state.”⁷⁷ The Vatican seeks stability over time for its protections (no new taxes); however, Israel responds that such guarantees are not feasible because “Israel is an evolving democracy. Conceptually all religions must be treated equally.”⁷⁸

The conflict, at its foundation, is a result of achieving balance between equality for all religions and honoring the “state” status of the Catholic Church under the 1993 Fundamental Agreement—an agreement between states holding international validity, which many see as “go[ing] beyond Israeli laws applying to its various religious communities.”⁷⁹

3. Article 7

Under Article 7 of the Fundamental Agreement, the parties, recognize a common interest in promoting and encouraging cultural exchanges between Catholic institutions worldwide, and educational, cultural and research institutions in Israel, and in facilitating access to manuscripts, historical documents and similar source materials, in conformity with applicable laws and regulations.⁸⁰

As noted above with regard to Article 4, access through visas has been difficult; thus, negotiations continue under the Fundamental Agreement. The Vatican Secretary of State, Cardinal Tarcisio Bertone recently criticized Israel for this difficulty, stating that, “the Custodian of the Holy Land[,] Father Pizzaballa[,] has pointed out that pilgrims from all over the world contribute to creating a more fair image of the state of Israel. The pilgrims to the holy places moreover enrich Israel. This year they were more numerous than during the Holy Year of 2000. . . . At times it seems to us that Israel does not evaluate all this properly and adequately.”⁸¹ However, as mentioned above, Israel has officially stated that they are working on a solution to facilitating the visa process for clergy while keeping in mind their security concerns.

⁷⁷ Palmieri-Billig, *Vatican upset at slow pace*, *supra* note 65.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Fundamental Agreement, *supra* note 49, at art. 7.

⁸¹ Lisa Palmieri-Billing, *Vatican speaks out on impasse in dialogue with Israel*, Jerusalem Post, Jan. 1, 2008, available at <http://www.jpost.com/servlet/Satellite?cid=1198517257227&pagename=JPost%2FJPArticle%2FShowFull>.

4. Article 9

Under Article 9 of the Fundamental Agreement, the parties agreed to permit the Catholic Church to “carry out its charitable functions through its health care and social welfare institutions, this right being exercised in harmony with the rights of the State in this field.”⁸² Some have expressed doubt the State of Israel has kept its word in this respect. Msgr. Sambri has noted that “equal compensation for services provided to the Israeli population, both Jewish and Palestinian, equivalent to those offered by state institutions” had not yet been provided.⁸³

5. Article 10

Finally, recent news reports and commentary indicate that property disputes remain between the parties, which need to be resolved as contemplated in Article 10 of the Fundamental Agreement. The parties had agreed to “aim to reach agreement within two years from the beginning of negotiations” in regard to “property, economic and fiscal matters relating to the Catholic Church generally, or to specific Catholic Communities or institutions” with the assistance of the Permanent Bilateral Working Commission.⁸⁴ On December 25, 2007, the *Jerusalem Post* reported that the Vatican was becoming impatient over the “bilateral financial agreement” that should have been concluded long ago, in accordance with Article 10, section 2 of the Fundamental Agreement.⁸⁵ Msgr. Sambri spoke out to describe the frustration of many: “[T]he current impasse in the negotiations seems strange not only to the Holy See[,] the Christian world and many countries friendly to Israel[,] but also to many Jews[,] honorable citizens of Israel or denizens of other countries.”⁸⁶ “Other Vatican officials and Israeli authorities in Rome considered the [recent] December 13[, 2007 Bilateral Working Commission] meeting a step forward.”⁸⁷ Moreover, “[o]fficial sources on the highest levels of the Curia” (the Holy See Administration) have stated that, despite a lack of “concrete results[,] everyone must recognize the efforts being made by Israel to solve the issues. Admittedly there is frustration but we need

⁸² Fundamental Agreement, *supra* note 49, at art. 9.

⁸³ *Nuncio to Washington says Israel not keeping its promises to the Holy See*, *supra* note 50.

⁸⁴ Fundamental Agreement, *supra* note 49, at art. 10.

⁸⁵ Palmieri-Billig, *Vatican upset at slow pace*, *supra* note 65.

⁸⁶ *Id.*

⁸⁷ *Id.* See discussion, Section IV.C., *infra*, for details of Dec. 13, 2007 meeting.

now to rethink the problems[,] define where we are[,] and decide how to proceed. Both sides are unquestionably determined to find a solution.”⁸⁸

Thus, remaining at issue with regard to Article 10 of the Fundamental Agreement are “requested tax exemptions for religious institutions and non-profit activities connected therewith (mostly conceded by Israel)” and the over-arching concern of stability.⁸⁹ Even if agreements are reached, those agreements “could be overturned by a future edict.”⁹⁰ As noted above, although the Fundamental Agreement calls for keeping the status quo in Article 4, Israel enacted a law in December 2002 “restricting the application of tax exemption statuses.”⁹¹

C. Current status of negotiations between Israel and the Holy See

As of December 13, 2007, according to their Joint Communiqué, the parties held a Plenary meeting in Jerusalem “to advance negotiations on economic arrangements between the State of Israel and the Holy See.”⁹² At this meeting, the parties “gave guidelines for the continuation of [] work . . .[,] resume[d] the activity of the Working Group on Individual Properties” and in agreeing to accelerate their work, set their next Plenary meeting for May 2008.⁹³ As of December 17, 2007, Apostolic Nuncio to the Holy Land, Archbishop Antonio Franco is reported to have stated, “There is nothing new. The important thing is that the work is being carried out with determination by both parties. Decisive will exists to reach a solution.”⁹⁴

V. Status of conversions

According to the United States Department of State, no official reports of forced conversions or punishment for conversion were made in Israel during the last year.⁹⁵ Forced conversions to Judaism are generally not a problem in Israel; rabbinical law has traditionally

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Press Release, Israel Ministry of Foreign Affairs, Negotiations on the Fundamental Agreement between Israel and the Holy See continue (Dec. 13, 2007), <http://www.mfa.gov.il/MFA/About+the+Ministry/MFA+Spokesman/2007/Plenary%20meeting%20in%20Jerusalem%20between%20Israeli%20and%20Holy%20See%20delegations%2013>.

⁹³ *Id.*

⁹⁴ *Inch by Inch, Nuncio in Holy Land: Will exists for an agreement*, Catholic News Agency, Dec. 17, 2007, <http://www.catholicnewsagency.com/new.php?n=11298>.

⁹⁵ *International Religious Freedom Report 2007, supra*, note 19.

required rabbis to discourage conversion to ensure that the true desires of potential converts are realized.⁹⁶

The recognition of certain conversions has, however, been subject to disagreement within Israel. Prior to a 2005 Supreme Court decision, controversy existed as to whether non-Orthodox conversions completed outside of Israel were valid and whether such conversions entitled converts to the right of return and recognition by the State.⁹⁷ This matter was settled by a 2005 case in which the Supreme Court ruled that non-Orthodox converts who converted to Judaism outside Israel were entitled to both the right of return and recognition by the state.⁹⁸ As such, under current law, the Israeli government may not refuse to recognize or register non-Orthodox converts from abroad.⁹⁹ Furthermore, the Israeli government may not refuse to recognize or register non-Jews legally living in Israel who were converted by overseas authorities.¹⁰⁰ The Orthodox authorities—more specifically the rabbinical courts—are not, however, bound by such requirements and may freely refuse to recognize non-orthodox conversions.¹⁰¹ Controversy continues regarding non-Jews living in Israel who were converted to Judaism by non-Orthodox authorities also within Israel. Specifically, there is a question as to whether these converts are entitled to the right of return when they apply for Israeli citizenship.¹⁰² Even if this specific matter is resolved, however, hardship will remain for non-orthodox converts in the areas of marriage and divorce due to ability of the rabbinical courts to refuse to recognize non-orthodox conversions.¹⁰³

⁹⁶ Aaron Moss, *Why Do Rabbis Discourage Conversions?*, Chabad.org, http://www.chabad.org/library/article_cdo/aid/248165/jewish/Why-Do-Rabbis-Discourage-Conversions.htm (last visited Dec. 20, 2007).

⁹⁷ Yuval Yoaz & Amiram Barkat, *Court orders change in status of non-Orthodox conversions*, Haaretz.com, Mar. 31, 2005,

<http://www.haaretz.com/hasen/pages/ShArt.jhtml?itemNo=559366&contrassID=1&subContrassID=9&sbSubContrassID=0&listSrc=Y>.

⁹⁸ *Id.*

⁹⁹ Natan Lerner, *Religious Liberty in the State of Israel*, 21 Emory Int'l L. Rev. 239, 268 (2007).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

PALESTINIAN TERRITORIES

I. Legal status of the Christian community in Palestinian Territories.

On June 27, 1967 the Israeli Knesset adopted the “Protection of Holy Places Law” which prohibits desecration of holy sites and ensures every person freedom to access to them.¹⁰⁴

Specifically, the law states, in pertinent part:

[1.] The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings with regard to those places.

[2(a)] Whosoever desecrates or otherwise violates a Holy Place shall be liable to imprisonment for a term of seven years. [2(b)] Whosoever does anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings with regard to those places shall be liable to imprisonment for a term of five years.

[3.] This Law shall add to, and not derogate from, any other law.

[4.] The Minister of Religious Affairs is charged with the implementation of this Law, and he may, after consultation with, or upon the proposal of, representatives of the religions concerned and with the consent of the Minister of Justice make regulations as to any matter relating to such implementation.¹⁰⁵

Since this law protects holy sites under Israeli jurisdiction, it does not extend to holy places within the Palestinian territories. The freedom to access holy sites in Palestine must be derived from general principles governing religious freedom in Palestine, since their holy sites lack the equivalent legal protection as those in Israel.

As the *Amended Basic Law* and the *Hamas Charter* demonstrate, the rights of Palestinian Christians and Jews are precariously protected by Palestinian legal norms. Additionally, the 1995 Interim Agreement on the West Bank and the Gaza Strip (also known as the “Oslo II Accords”), ostensibly ensures Jews and Christians the freedom to access holy sites in Palestine.¹⁰⁶ The Protocol Concerning Civil Affairs states, in pertinent part:

1. Responsibility over sites of religious significance in the West Bank and the Gaza Strip (hereinafter – “Holy Sites”) will be transferred to the Palestinian side.

¹⁰⁴ Protection of Holy Places Law, 5727-1967, 21 L.S.I. 76 (1966-67) (Isr.), English translation, available at <http://www.knesset.gov.il/laws/special/eng/HolyPlaces.htm> [attached hereto in Appendix I-F].

¹⁰⁵ *Id.*

¹⁰⁶ See Interim Agreement on the West Bank and the Gaza Strip, Isr.-Palestine, (Sept. 28, 1995), http://www.knesset.gov.il/process/docs/heskemb_eng.htm [hereinafter Oslo II].

2. Both sides shall respect and protect the listed below religious rights of Jews, Christians, Moslems and Samaritans:
 - a. protection of the Holy Sites;
 - b. free access to the Holy Sites; and
 - c. freedom of worship and practice.¹⁰⁷

This protocol also states that each side will “respect sites in the West Bank and the Gaza Strip which are regarded as holy, or which hold archaeological value. Each side shall have the right to raise issues relating to those sites before the Joint Committee” which mediates disputes between them.¹⁰⁸

Also, the Protocol Concerning Redeployment and Security Arrangements ensures “free, unimpeded and secure access” to Joseph’s Tomb in Nablus and to the Shalom Al Israel synagogue in Jericho.¹⁰⁹ This protocol permits Israeli plainclothes guards inside these locations “[g]iven the Jewish nature of such sites,” and instructs that “[t]he present situation and the existing religious practices shall be preserved.”¹¹⁰

In sum, the Oslo II Accord was intended to protect the freedom of Jews, Christians and Moslems to access holy sites. Given significant changes in Israeli-Palestinian relations since 1995, the Oslo II Accord may have little bearing on securing access to holy sites today. Regretably, the *Amended Basic Law* and the *Hamas Charter* fail to address the issue entirely and to adequately prohibit religious discrimination in general. Thus, no clear legal norm protects the freedom of Jews and Christians to securely access holy sites in Palestine today.

In practical terms, the Palestinians do not appear to be abiding by these laws. For instance, under the Gaza-Jericho Agreement, the Palestinians agreed to allow Israel full and unrestricted access to holy sites in the Gaza Strip and Jericho,¹¹¹ and under the Israeli-Palestinian Interim Agreement, the Palestinians agreed to freedom of access to holy sites in the West

¹⁰⁷ Oslo II, Annex III: Protocol Concerning Civil Affairs, *supra* note 106, at app. 1, art. 32.1-2, available at http://www.knesset.gov.il/process/docs/heskemb4_eng.htm.

¹⁰⁸ *Id.* at app.1, art. 2.9.

¹⁰⁹ Oslo II, Annex I: Protocol Concerning Redeployment and Security Arrangements, *supra* note 106, at art. V.2.b., app. 4, available at http://www.knesset.gov.il/process/docs/heskemb2_eng.htm.

¹¹⁰ *Id.* at art. V.2.b.(1)(c), (2).

¹¹¹ Nadav Shragai, *The Palestinian Authority and the Jewish Holy Sites in the West Bank: Rachel’s Tomb as a Test Case*, Institute for Contemporary Affairs, Dec. 2007, available at http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DRIT=2&DBID=1&LNGID=1&TMID=111&FID=377&PID=1852&IID=1923&TTL=The_Palestinian_Authority_and_the_Jewish_Holy_Sites_in_the_West_Bank:_Rachel’s_Tomb_as_a_Test_Case. The Agreement was signed in Cairo in May 1994.

Bank.¹¹² However, reports show the opposite: Palestinians have restricted access to these holy sites or have destroyed and desecrated them.¹¹³

In some circles, Palestinians do not even believe that the Jewish people possess religious sites in Palestine.¹¹⁴ According to some media reports, PA leaders have made statements that, from their perspective, nothing in Jerusalem reveals anything Jewish, and that the Western Wall is really an Islamic shrine.¹¹⁵ It was also reported that in 2000, at the beginning of the second *intifada*, Palestinians specifically targeted holy sites to desecrate and destroy with more regularity.¹¹⁶ Moreover, reports indicate that terrorist organizations also target Christian churches.¹¹⁷ These reports support the conclusion that Jews visiting holy sites in Palestine are risking their lives, if they are even allowed access to sites at all.¹¹⁸

The following list is a summary of Palestinians assaults and aggression near Holy Sites:

- January 23, 1976: 586 Damour Christians massacred
- September 1996: Rachel's Tomb, located on the outskirts of Bethlehem. During riots, Palestinians threw rocks and firebombs at the site.
- September 1996: Joseph's Tomb in Nablus. Palestinians assaulted Israeli soldiers, killing six, and then entered the Tomb and set fire to Jewish prayer books, Bibles, and religious articles.
- July 5, 1997: Abraham's Oak Russian "Holy Trinity" Monastery, located in Palestinian controlled Hebron. Palestinian policemen physically removed the monks and nuns and took over the holy site.
- January 2000: Jericho Monastery. Palestinian police removed five monks and turned property over to the Moscow Patriarchate of the Russian Orthodox Church.
- 2000: Rachel's Tomb, Palestinian Muslims began claiming the tomb, calling it "Bilal ibn Rabah mosque".
- April 10, 2000; Dec. 27, 2006; Feb. 2007: Rachel's Tomb. Again, Palestinians threw rocks and/or fired guns at the site.
- October 2000: Joseph's Tomb in Nablus. Palestinians again attacked and set fire to the building at the site, destroying it.
- October/November 2000: Church of St. Nicholas, Beit Jalla.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Lenny Ben-David, *Denial of Religious Rights by the Palestinian Authority*, HonestReporting, Nov. 11, 2002, http://www.honestreporting.com/articles/45884734/reports/Denial_of_Religious_Rights_by_the_Palestinian_Authority.asp.

¹¹⁵ *Id.*

¹¹⁶ Shragai, *supra* note 111.

¹¹⁷ Avi Issacharoff, Ignoring the chaos, *haaretz.com*, May 12, 2007, *available at* <http://www.haaretz.com/hasen/spages/855677.html>.

¹¹⁸ Ben-David, *supra* note 114.

- Fall 2000: “Shalom al Israel” Synagogue in Jericho. The site was attacked and holy books and relics were burned. The synagogue’s ancient mosaic was also damaged.
- May 2002: Church of the Nativity. Palestinians forcibly took over the site, stole articles and food, and urinated on the floors.
- 2007: Tomb of Joshua bin Nun at Kefel Hares vandalized.¹¹⁹

In Bethlehem, the Annexation Wall separating the city from Jerusalem and Israel has made it “extremely difficult” for Christian pilgrims to pass in order to visit holy sites¹²⁰ such as the Omar Mosque, Nativity Church, and Manger Square.¹²¹ A 2004 U.N. report evaluating the restricted access to Jerusalem’s and Bethlehem’s holy sites reported restricted access on 26 percent of roads in the Bethlehem district.¹²² As a solution to this problem, an “express checkpoint” was designed in 2007 to allow easier access for international visitors on pilgrimage to Bethlehem for Christmas, but Palestinian Christians were forced to use the “regular checkpoint,” which involves “an intricate and multi-tiered set of security checks, winding through a maze into an underground bunker where Israeli military personnel search and interrogate them, and the waiting lines can take many hours.”¹²³ Despite such efforts to improve

¹¹⁹ See *id.*; see also Shragai, *supra* note 111. These sources reference more related incidents.

¹²⁰ Saed Bannoura, *Israel arranges ‘easy access’ for international Christians to access Bethlehem during Christmas*, International Middle East Media Center (IMEMC) News, Dec. 24, 2007, <http://www.imemc.org/article/52074> (“The Wall has made it extremely difficult for pilgrims to pass, particularly during Christmas, when an estimated 20,000 international visitors are expected to visit Bethlehem for the Christmas mass.”).

¹²¹ A 2006 report by the U.S. Department of State also discusses the restriction to access of holy sites in Bethlehem due to the separation barrier:

The separation barrier made it difficult for Bethlehem-area Christians to reach the Church of the Holy Sepulcher in Jerusalem, and it made visits to Christian sites in Bethany and in Bethlehem difficult for Palestinian Christians who live on the Israeli side of the barrier, further fragmenting and dividing this small minority community. Foreign pilgrims sometimes experienced difficulty in obtaining access to Christian holy sites in the West Bank because of the barrier and Israeli restrictions on movement in the West Bank. The barrier and its checkpoints also impeded the movement of clergy between Jerusalem and West Bank churches and monasteries, as well as the movement of congregations between their homes and places of worship. On November 15, 2005, Israel opened a new crossing terminal from Jerusalem into Bethlehem for tourists and non-tourists. After initial complaints of long lines, the Israeli government instituted new screening procedures and agreed to ease access into Bethlehem during the Christmas holiday, with restrictions eased from December 24 to January 19. For example, the PA reported 30,000 visitors to the Church of the Nativity for various Christmas celebrations on December 24-25 2005, the largest turnout since 2000.

International Religious Freedom Report 2006, *supra* note 11.

¹²² U.N. Office for the Coordination of Humanitarian Affairs (OCHA) and U.N. Office of the Special Coordinator for the Peace Process in the Middle East (UNSCO), *Costs of Conflict: The Changing Face of Bethlehem* 4 (Dec. 2004) [hereinafter U.N. Bethlehem Report], available at http://domino.un.org/pdfs/Beth_Rep_Dec04.pdf (citing 8 concrete roadblocks, 10 checkpoints, 55 dirt mounds, 1 road gate, and 4 closed barrier gates).

¹²³ Bannoura, *supra* note 120. Before gaining access to the checkpoint, Palestinian Christians face the additional problem of obtaining a permit from Israeli military forces months in advance, which are “extremely difficult to

access to holy sites in Bethlehem during holiday seasons, “[t]he current situation is grim.”¹²⁴ One internal group concluded, “The walls and fences that encircle Bethlehem have turned this 4,000 year old city into a prison for its 160,000 citizens. The number of tourists visiting Bethlehem has dropped from nearly 92,000 in 2000 to a mere 7,249 in 2004.”¹²⁵

II. Legal status of the Christian community in Palestine.

Two primary parties dominate Palestinian politics: Fatah, which is the largest political faction, and Hamas, the Islamist movement. Fatah was founded in the 1950s by Yasir Arafat and its members form the backbone of the PA.¹²⁶ The group is led by PA president Mahmoud Abbas. Hamas was formed in 1987 and is committed to the destruction of Israel and the establishment of an Islamic state in the region.¹²⁷

After parliamentary elections in 2006, Hamas became the senior partner in a tenuous “unity government” agreement with Fatah. However, in June 2007, PA president Abbas dissolved the unity government, declared a state of emergency, and dismissed Prime Minister Ismail Haniya (a Hamas member). Subsequent political and military conflict resulted in Hamas’ expulsion of Fatah security forces from the Gaza strip. As a result, Hamas controls Gaza under Haniya’s leadership, and the West Bank remains under the control of Fatah and PA President Abbas. Hamas continues to dominate the Palestinian legislature.¹²⁸

The Palestinian territories are ostensibly subject to the jurisdiction of the Palestinian Authority; however, Hamas’ control over the Gaza strip renders the PA’s influence and authority in that region somewhat dubious.¹²⁹

obtain and few are ever given out.” *Id.* During the Christmas holiday in 2003, a U.N. report found that only “2,785 permits were issued for Palestinian Christians residing in Bethlehem city—a number unable to satisfy all Christians wanting to travel to Jerusalem.” U.N. Bethlehem Report, *supra* note 122, at 6. Moreover, the applicants could not control the dates that they were allowed to enter. *Id.*

¹²⁴ Press Release, Open Bethlehem, Bethlehem issues call to the world (Nov. 9, 2005), http://openbethlehem.org/index.php?option=com_content&task=view&id=65&Itemid=17.

¹²⁵ *Id.*

¹²⁶ Hamas: Council on Foreign Relations, <http://www.cfr.org/publication/8968/#1> (last visited Jan. 4, 2008).

¹²⁷ *Id.*

¹²⁸ Steven Erlanger, *Palestinian Government Is Approved*, N.Y. Times, Mar. 18, 2007, available at <http://www.nytimes.com/2007/03/18/world/middleeast/18mideast.html> (last visited Jan. 4, 2008).

¹²⁹ *Id.*

A. Fatah and the West Bank.

Yasir Arafat signed a transitional constitution for the Palestine Authority in 2002.¹³⁰ Under this legal framework, the PA committed itself to observation of international human rights principles and to the Palestinian Basic Law.¹³¹ The Basic Law provides for freedom of religion and calls for respect and sanctity for other “heavenly” religions, but also states that Shari’a (Islamic) law shall be the main source of legislation.¹³²

The Palestinian Authority treats citizens differently according to religious faith and requires Palestinians to declare their religious affiliation on identification papers.¹³³ Several articles in the Basic Law instruct that Christians should be tolerated and not persecuted; however, by implication of Islamic law, full privileges of the Basic Law are *not* extended to Christians.

Because Islam is the official religion of the Palestinian Territories, Islamic institutions and places of worship receive preferential financial treatment for the construction and maintenance of mosques and for the salaries of imams. Some Christians are provided limited financial support, but no Jewish institutions are supported.¹³⁴

In 2003, Yasir Arafat published the *Amended Basic Law* in Ramallah City. This was effective as of its published date in the Official Gazette of the Palestinian Legislative Council.¹³⁵

The Amended Basic Law explicitly provides for religious freedom. Relevant excerpts include:

Title One, Article (4)

1. Islam is the official religion in Palestine. Respect and sanctity of all other heavenly religions shall be maintained.
2. The principles of Islamic Shari’a [Islamic law] shall be the main source of legislation.¹³⁶

Title Two, Public Rights & Freedoms, Article (9)

All Palestinians are equal under the law and judiciary, without discrimination because of race, sex, color, **religion**, political views, or disability.

Article (10)

¹³⁰ Adrien Wing, *The Palestinian Basic Law: Embryonic Constitutionalism*, 31 Case W. Res. J. Int’l. L. 383 (1999).

¹³¹ George Bisharat, *The Legal Foundations of Peace and Prosperity in the Middle East*, 31 Case W. Res. J. Int’l. L. 253, 261-62 (1999).

¹³² *International Religious Freedom Report 2007*, *supra* note 19.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ The Amended Basic Law, Official Gazette, Mar. 19, 2003 [hereafter “Amended Basic Law”], *available at* http://www.usaid.gov/wbg/misc/Amended_Basic_Law.pdf (last visited Jan. 4, 2008) (attached hereto in Appendix I-D).

¹³⁶ *Id.*

1. Basic human rights and freedoms shall be binding and respected.
2. The Palestinian National Authority shall work without delay to join regional and international declarations and covenants which protect human rights.

Article (11)

1. Personal freedom is a natural right, and shall be guaranteed and protected.

Article (18)

Freedom of belief, worship, and performance of religious rituals are guaranteed, provided that they do not violate public order or public morals.

Article (19)

Every person shall have the right to freedom of thought, conscience and expression, and shall have the right to publish his opinion orally, in writing, or in any form of art, or through any other form of expression, provided that it does not contradict with the provisions of law.¹³⁷

Under Articles 18 and 19, basic freedoms are not absolute; they may be constrained by violation of public order or *public morals*. The precise definition of “public morals,” although obviously important, is unknown.

In its 2007 International Religious Freedom Report, the U.S. State Department stated that the Palestinian Authority “generally respected . . . in practice” the “freedom of religion.”¹³⁸ Although the PA does not officially sponsor interfaith dialogue, it does send representatives to meetings on improving inter-religious relations.¹³⁹ The Palestinian Legislative Council reserves six seats for Christians; there are no seats reserved for members of any other faith.¹⁴⁰

Citizens deprived of personal freedoms appear to have some recourse against the government:

Article (32)

Each aggression committed against any personal freedom, against private life of human being, or against any of rights or freedom, which have been guaranteed by the law or by this basic law, shall be considered as a crime. Criminal and civil case resultant from such infringement shall not be subject to any status of limitation. The National Authority shall guarantee fair indemnity for those who suffered from such damages.¹⁴¹

¹³⁷ *Id.* (emphasis added).

¹³⁸ *International Religious Freedom Report 2007, supra* note 19. The Report further stated: “There were unconfirmed reports of Christians being targeted for extortion or abuse during the period covered, and the PA did not take action to investigate these injustices allegedly perpetrated by PA officials.” *Id.* Also, “[t]here were reports . . . that PA security forces and judicial officials colluded with members of [] gangs to seize land from Christians.” *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ The Amended Basic Law, *supra* note 135, at art. 32.

Article 49 states that every Legislative Council Member must swear an oath which would violate the Christian conscience:

Article (49)

Before commencing work or assuming, every [Legislative Council] Member shall swear the following oath before the Council: - "I swear by Allah The Almighty to be faithful to the Homeland, to preserve the rights and interests of the people and nation, to respect law, and perform my duties in the best manner, as Allah is my witness".¹⁴²

All legally recognized sects are empowered to adjudicate personal status matters, according to the U.S. State Department.¹⁴³ Further, the PA allows certain churches to establish ecclesiastical courts "whose rulings are considered legally binding on personal status and some property matters" since regular "[c]ivil courts do not adjudicate such matters."¹⁴⁴ The State Department report states that long-recognized churches, Catholic and Orthodox, are afforded this privilege. Newer, more prominent churches, such as Baptists, Assembly of God, and the Nazarene Church, are allowed to "perform certain personal status legal functions, such as issuing marriage certificates."¹⁴⁵ Smaller, less prominent churches are not recognized.¹⁴⁶

PA President Abbas has taken steps to eliminate religious incitement, although religious persecution of Christians continues in the West Bank. In Bethlehem, Christian residents have been harassed and intimidated by the city's Muslim majority.¹⁴⁷ The PA judiciary has failed to adjudicate numerous seizures of Christians' property by criminal gangs.¹⁴⁸ PA officials appear to have been complicit in some of these property extortion schemes as well.¹⁴⁹ The International Fellowship of Christians and Jews (IFCJ) reports that oppression of Bethlehem-area Christians by Islamic extremists has risen sharply since Israel relinquished Bethlehem's control to the PA in 1995.¹⁵⁰ As a result, the Christian proportion of Bethlehem's population has dropped from 62 percent in 1995 to approximately 15 percent today (a historic low).¹⁵¹

¹⁴² *Id.* at art. 49.

¹⁴³ *International Religious Freedom Report 2007*, *supra* note 19.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Religion News Service, *Persecution of Christian Arabs Needs to be Stopped*, Dec. 12, 2007, <http://www.religionnews.com/press02/PR121307.html> (last visited Jan. 4, 2008).

¹⁵¹ *Id.*

The Christian population of Nazareth has also decreased dramatically due to the rise and spread of militant Islam; Christian stores have been burned and Christians have been persecuted individually.¹⁵²

B. Hamas and Gaza.

Hamas prevailed in Parliamentary elections for the Palestinian territories in January 2006. As a result of the June 2007 military expulsion of Fatah security forces, Hamas now holds power over Gaza.

The *Hamas Charter* of 1988 does not bode well for Christians seeking to live peacefully under Hamas' rule.¹⁵³ The Preamble to the *Charter* declares that Muslims “[a]re the best nation raised up unto mankind: [they] command that which is just, and [they] forbid that which is unjust, and [they] believe in Allah.”¹⁵⁴ Unbelievers are transgressors and they “are smitten with vileness wheresoever they are found; unless they obtain security by entering into a treaty with Allah.”¹⁵⁵ Article One of the *Charter* specifies that Islam is the “Movement’s programme,” and “draws its ideas, ways of thinking and understanding of the universe, life and man [from Islam]. It resorts to [Islam] for judgment in all its conduct”¹⁵⁶ Understandably then, the “Islamic Resistance Movement welcomes *every Moslem* who embraces its faith, ideology, follows its programme, keeps its secrets, and wants to belong to its ranks and carry out the duty.”¹⁵⁷ Article Six states that Hamas “strives to raise the banner of Allah over every inch of Palestine, for under the wing of Islam followers of all religions can coexist in security and safety where their lives, possessions and rights are concerned.”¹⁵⁸

Although this portion of the *Hamas Charter* seemingly suggests tolerance, its sincerity is seriously questioned by numerous, specific accounts of persecution. About two to three thousand Christians live in the Gaza territory, along with an overwhelmingly conservative Muslim

¹⁵² Palestine Facts: Current Events: Christians, *What Has Happened to Christians Living in Israel and Neighboring Areas?* 2008, available at http://www.palestinefacts.org/pf_current_christians.php (last visited Jan. 4, 2008).

¹⁵³ The *Charter* is available at Hamas Charter, <http://www.mideastweb.org/hamas.htm>.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* (emphasis added).

¹⁵⁸ *Id.*

majority of 1.5 million people.¹⁵⁹ There have been multiple incidents of violence and harassment of Christians living in Gaza; for example, the manager of Gaza's only Christian bookstore was kidnapped and murdered in October.¹⁶⁰ The store had been firebombed six months before the kidnapping, and the victim had been the target of death threats prior to the kidnapping.¹⁶¹ One commentator has noted that the Gaza Christian community "[t]eeter[s] on the brink of extinction at the hands of the 'Religion of Peace.'"¹⁶² The writer reported the "systematic destruction of churches and desecration of religious objects . . . following the HAMAS takeover of the Gaza strip . . . and the imposition of Islamic rule."¹⁶³ The militant leader of the Hamas group Jihadia Salafiya has stated that Christian missionaries will be "dealt with harshly."¹⁶⁴ The same group is also suspected of a recent terrorist attack on a United Nations school—one person was killed in that attack.¹⁶⁵

These incidents comprise just a few examples of the persecution. The following discussion contained in Sections IV through VI, *infra*, provide greater detail and clearly illustrate that whatever commitment to "tolerance" Hamas may state in its *Charter*, the reality of Hamas' rule in Gaza thus far calls this commitment into question, especially when it comes to treatment of Jews and Christians.

Additionally, the following contradictory terms of *Hamas Charter* belie the sincerity of tolerance:

Article Seven

. . . The Day of Judgment will not come about until Muslims fight the Jews

Article Eight

Allah is its target, the Prophet is its model, the Koran its constitution:
Jihad is its path and death for the sake of Allah is the loftiest of its wishes.

¹⁵⁹ Unity Coalition for Israel, *Gaza's Christians Keep Low Xmas Profile*, Daily News, Dec. 23, 2007, available at <http://www.israelunitycoalition.org/news/article.php?id=2168>.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Patrick Poole, *Islam's Global War Against Christianity*, The American Thinker, July 5, 2007, available at http://www.americanthinker.com/2007/07/islams_global_war_against_chri.html

¹⁶³ *Id.*

¹⁶⁴ Aaron Klein, *Christians Must Accept Islamic Rule*, YNet News, June 19, 2007, available at <http://www.ynetnews.com/articles/0,7340,L-3414753,00.html>.

¹⁶⁵ *Id.*

Article Eleven

The Islamic Resistance Movement believes that the land of Palestine is an Islamic Waqf consecrated for future Muslim generations until Judgment Day. It, or any part of it, should not be given up. . . .

This is the law governing the land of Palestine in the Islamic Sharia (law) and the same goes for any land the Moslems have conquered by force, because during the times of (Islamic) conquests, the Moslems consecrated these lands to Moslems till the Day of Judgment.

. . . [T]he land should be left with its owners who could benefit by its fruit. As for the real ownership of the land and the land itself, it should be consecrated for Moslem generations till Judgment Day. Those who are on the land, are there only to benefit from its fruit. This Waqf remains as long as earth and heaven remain. Any procedure in contradiction to Islamic Sharia, where Palestine is concerned, is null and void.

Article Thirteen

. . .

There is no solution for the Palestinian question except through Jihad. Initiatives, proposals and international conferences are all a waste of time and vain endeavors.

Article Thirty-one

The Islamic Resistance Movement is a humanistic movement. It takes care of human rights and is guided by Islamic tolerance when dealing with the followers of other religions. It does not antagonize anyone of them except if it is antagonized by it or stands in its way to hamper its moves and waste its efforts.

Under the wing of Islam, it is possible for the followers of the three religions - Islam, Christianity and Judaism - to coexist in peace and quiet with each other. Peace and quiet would not be possible except under the wing of Islam

. . . .

It is the duty of the followers of other religions to stop disputing the sovereignty of Islam in this region, because the day these followers take over there will be nothing but carnage, displacement and terror.¹⁶⁶

III. Statistics on the emigration of Christians from Palestinian Territories.

The West Bank and Gaza Strip have a combined population of 3.7 million, and East Jerusalem has another 415,000.¹⁶⁷ The Palestinian residents are approximately 98 percent Sunni Muslims. Various sources significantly disagree on the actual number of Christians in the current population. Some sources estimate that there are approximately 200,000 Christians, while others

¹⁶⁶ *Hamas Charter, supra* note 153.

¹⁶⁷ *International Religious Freedom Report 2007, supra* note 19.

claim only 40,000 to 90,000 Christians remain in the West Bank and Gaza Strip.¹⁶⁸ The PA estimates approximately 50,000 Christians (about 1.3 percent) live in the West Bank and Gaza Strip.¹⁶⁹ While the current numbers are unclear, it is clear that there has been a mass Christian exodus from Palestinian territory in the past half-century. Many are leaving the area because of persecution from the politically empowered Islamic groups.¹⁷⁰ Christians are a religious minority and must adhere to Muslim religious laws.¹⁷¹

The Cities of Bethlehem and Jerusalem reflect the drastic changes in demographics over the past decade or so. Prior to Israel's withdrawal in 1995, approximately 60 percent of Bethlehem's population was Christian.¹⁷² Today, Christians are the minority.¹⁷³ "The Christian exodus has been going on for almost a decade because of relentless Muslim threats against Christians."¹⁷⁴ Bethlehem today is less than 20 percent Christian, which suggests an emigration of thousands.¹⁷⁵ "Every week there are Christian families trying to sell their property to religious authorities of the Holy Land."¹⁷⁶ The city of Jerusalem is another example of the changing population. Fifty years ago, the city contained about 40 percent more Christians than at present.¹⁷⁷ Christians constituted a plurality of the population of Jerusalem in the 1920s, but number under 2 percent of the city's population today.¹⁷⁸

IV. Status of conversions: The Palestinian government and Hamas regarding religious choice

Apostates to Islam are not treated in accordance with Palestinian Basic Law. According to their governing documents, Fatah and Hamas should respect and protect the rights of all

¹⁶⁸ *Id.* See also *Persecuted Countries: Palestine*, Persecution.org, <http://www.persecution.org/suffering/countryinfo/detailphp?countrycode=36> (last visited Dec. 20, 2007) (stating that the estimate of Palestinian Christians is 39,560).

¹⁶⁹ *International Religious Freedom Report 2007*, *supra* note 19.

¹⁷⁰ *Persecuted Countries*, *supra* note 168.

¹⁷¹ *Id.*

¹⁷² *Christian Arabs*, *supra* note 150.

¹⁷³ *Persecuted Countries*, *supra* note 168.

¹⁷⁴ David Meir-Levi, *Bethlehem's Christian Exodus*, FrontPageMagazine.com, Jan. 5, 2005, <http://www.frontpagemag.com/Articles/Read.aspx?GUID={8525A8B1-166B-4998-96E5-DC965F4C7CF6}>; see also Greg Myre, *A Sad New Carol: Go Ye From Bethlehem*, N.Y. Times, Dec. 23, 2004, available at <http://www.nytimes.com/2004/12/23/international/middleeast/23bethlehem.html?hp>.

¹⁷⁵ Meir-Levi, *supra* note 174.

¹⁷⁶ *Joint Israeli-Vatican commission makes no real progress*, AsiaNews.it, Dec. 17, 2007, <http://www.asianews.it/index.php?l=en&art=11060&geo=57&size=A>.

¹⁷⁷ Israeli-Palestinian ProCon.org, *Population Statistics*,

<http://www.israelipalestinianprocon.org/populationpalestine.html#sources2> (last visited Jan. 7, 2008)

¹⁷⁸ *What has happened to Christians*, *supra* note 152.

religious observers. Prime Minister Haniyeh has stated that Hamas would respect all past agreements made by the Palestinian Authority.¹⁷⁹ Holding true to this statement would bind Hamas to the *Amended Basic Law* of Palestine discussed above. Likewise, the laws of the Palestinian Authority also bind President Abbas, whose Fatah group controls the West Bank.

The *Amended Basic Law* ostensibly respects religious freedom. For instance, Article Nine states, “All Palestinians are equal . . . without discrimination because of . . . religion,”¹⁸⁰ and Article Eighteen provides, “Freedom of belief, worship, and performance of religious rituals are guaranteed, provided that they do not violate public order or public morals.”¹⁸¹ (The *Amended Basic Law*, however, also proclaims Islamic Shari’a as the law of the land.¹⁸²) Apart from the *Amended Basic Law*, Hamas should also respect religious choice under its own *Charter*.¹⁸³

There is nothing in the *Amended Basic Law* or the *Hamas Charter* that authorizes forced religious conversions or punishment for those who convert from Islam. Note, however, that both legal documents subordinate themselves to Islamic Shari’a, and how Shari’a treats forced conversions is unclear. Traditionally, conversion from Islam, has been punishable under some interpretations of Shari’a law. Most Islamic nations reflect Shari’a in their governing documents, utilizing it to justify punishment of converts, but there is some disagreement over how to interpret Shari’a.¹⁸⁴

As a fundamentalist Islamic organization seeking to implement an Islamic theocracy over the entirety of Palestine, Hamas’ interpretation of Shari’a law is bent toward harsh punishments for apostasy. One such interpretation states,

Whoever falls away from faith in Islam commits—from an Islamic perspective—an unforgivable sin. . . . He who falls away from Islam must, according to the Shari’a, be prosecuted, taken into custody by force, and called on to repent. If necessary, his return is to be ‘helped’ along with torture. He who does not

¹⁷⁹ Kaveh L. Afrasiabi, *The Death of the Two-State Solution*, Asia Times Online, June 20, 2007, http://www.atimes.com/atimes/Middle_East/IF20Ak04.html; Patrick St. Paul, *Haniyeh: “We are the Legitimate Government,”* Monthly Review Online, June 16, 2007, <http://www.monthlyreview.org/mrzine/sp160607.html>.

¹⁸⁰ *Amended Basic Law*, *supra* note 135.

¹⁸¹ *Id.* at art. 18.

¹⁸² *Id.* at art. 4.

¹⁸³ See Article 31 quoted above.

¹⁸⁴ Magdi Abdelhadi, *What Islam Says on Religious Freedom*, BBC News Online, Mar. 27, 2006, http://news.bbc.co.uk/2/hi/south_asia/4850080.stm; Dr. Ahmad Shafaat, *The Punishment of Apostasy in Islam Part I: The Qur’anic Perspective*, IslamicPerspectives.com, Feb. 2006, <http://www.islamicperspectives.com/Apostasy1.htm>.

embrace Islam again has, according to the Sharia, forfeited his life and is to be put to death by the state.¹⁸⁵

In light of the 2006 split between the Hamas government and Fatah, the potential for punishing apostasy is much greater in Hamas-controlled Gaza.

Furthermore, “[u]nder most schools of Islamic law (Hanafi, Maliki, Shafii, Hanbali, Shia Jaafari), the apostate is an outlaw.”¹⁸⁶ Certain Muslim countries, even moderate ones, recognize that apostates may be even put to death by their own families, which is sanctioned by the authorities in some places.¹⁸⁷ Additionally, there is no due process requirement for those accused of apostasy:

As in other areas of Islamic law, probative evidence relies upon the bona fides of the witnesses more than upon the substance of the act that constitute[s] apostasy. . . . The punishment for an apostate is death, traditionally by beheading, although crucifixion and immolation have also been employed.¹⁸⁸

There are documented instances of Islamic apostates in PA.¹⁸⁹ Dr. Justus Weiner, a human rights lawyer, relates some stories in which he was personally involved.¹⁹⁰ In one instance, the PA imprisoned a Muslim convert to Christianity for twenty-one months, seven of which were in solitary confinement.¹⁹¹ In another account, Palestinian authorities burned a Christian convert by putting out their cigarettes on his back and held him in a cell without food for many days; masked men later murdered him.¹⁹² In the West Bank in 1997, a Palestinian court sentenced a Palestinian convert to Christianity who refused to convert back to Islam for insulting

¹⁸⁵ Abdurrahmani ʿl-Djaziri, *Introduction to The Penalties for Apostasy in Islam: According to the Four Schools of Islamic Law*, Light of Life, (1st English ed. Villach 1997), available at <http://www.light-of-life.com/eng/ilaw/>; see also Jamie Glazov, *Symposium: The Muslim Persecution of Christians*, FrontPageMagazine.com, Oct. 10, 2003, <http://www.frontpagemag.com/Articles/Read.aspx?GUID=8C1D2863-9FE5-43E9-BA8E-B21C2FFE5158>.

¹⁸⁶ David Forte, *Islam’s Trajectory*, Real Clear Politics, Aug. 25, 2006, at 5, http://www.realclearpolitics.com/articles/2006/08/islams_trajectory.html.

¹⁸⁷ *Id.* at 3.

¹⁸⁸ *Id.* at 5.

¹⁸⁹ Glazov, *Muslim Persecution of Christians*, *supra* note 185.

¹⁹⁰ See Justus Reid Weiner, *Human Rights of Christians in Palestinian Society* (Yuval Press 2005).

¹⁹¹ Paul Steven Ghiringhelli, *Treatment of Palestinian Christians ‘Medieval,’* Charisma Mag.; see also Michelle Vu, *Muslim Persecution of Christians in Palestine*, ChristianToday.com, July 23, 2007, <http://www.doctorbulldog.wordpress.com/2007/07/23/muslim-persecution-of-christians-in-palestine> (reporting on Dr. Justus Weiner’s report from the incarcerated man and his interview with him).

¹⁹² See Michelle Vu, *Persecution Fuelling Drastic Decline of Christians in Palestine*, ChristianToday.com, July 23, 2007, <http://www.christiantoday.com/article/persecution.fuelling.drastic.decline.of.christians.in.palestine/11791-2.htm>.

a Muslim preacher.¹⁹³ In Bethlehem, Ahmad El-Achwal was tortured and eventually killed because he converted to Christianity from Islam.¹⁹⁴ In July 2003, Islamic extremists kidnapped another Muslim convert to Christianity and later “returned [him] to his family, slaughtered and cut into four pieces.”¹⁹⁵ For further testimonials of apostates from Islam, Ibn Warraq (pseudonym) edited an enlightening book in 2003 entitled *Leaving Islam: Apostates Speak Out* published by Prometheus Books. *Leaving Islam* tells the stories of many apostates who fear for their lives because of their decision to leave Islam.¹⁹⁶

There are also reports of forced conversions to Islam by Palestinians. In a recently documented situation in Gaza, members of Hamas forced a Christian university professor to convert to Islam.¹⁹⁷ Furthermore, the approximately 2,000 Christians in the Gaza Strip have been warned to embrace Islamic law or convert—a threat which extends to Christian missionaries and those attempting to convert Muslims to Christianity.¹⁹⁸

In sum, though there are no written laws governing apostasy in the Palestinian territories, the fact that the *Amended Basic Law* states that Shari’a is “the law of the land” makes severe punishment for apostates and forced conversions likely. Moreover, reports from the area indicate that such violations of human rights are indeed occurring.

V. Persecution of Christians in Palestine

Muslim persecution of Christians in the Middle East has existed since the Muslim Arab Conquest of 636 A.D., when Muslims sought to convert everyone to Islam, even by force. They largely succeeded: the Middle East, an area once dominated by Christians, is now home to an

¹⁹³ Israeli Gov. report, *Palestinian Authority’s Treatment of Christians in the Autonomous Areas*, Oct. 30, 1997, (trans. Dr. A. Lerner), available at <http://www.Science.co.il/arab-israeli-conflict/articles/Imra-1997-10-30.asp>.

¹⁹⁴ *Middle East: Palestine Country Report*, Persecution.org, Oct. 10, 2006, <http://www.persecution.org/suffering/printcountryinfodetail.php?countrycode=36>.

¹⁹⁵ Barnabas Fund, *Muslim Convert to Christianity Butchered*, Barnabasfund.org, July 29, 2003, http://www.barnabasfund.org/news/archives/article.php?ID_news_items=65.

¹⁹⁶ See also *Leaving Islam*, FaithFreedom.org, <http://www.faithfreedom.org/testimonials.htm> (telling the “stories of people who have become disillusioned with Islam and have left it. Naturally their ID has been kept in secret and in some cases [] changed . . . This is necessary to protect them from becoming the target of Islamic persecution. The penalty of apostasy in Islam is death.” *Id.*).

¹⁹⁷ Khaled Abu Toameh, *Hamas Forced Professor to Convert*, Jerusalem Post, Aug. 5, 2007, available at <http://www.jpost.com/servlet/Satellite?cid=1186066387589&pagename=JPost%2FJPArticle%2FPrinter>.

¹⁹⁸ Dan Wooding, *Hamas ‘Complicit in Persecution of Gaza Christians,’* Dec. 20, 2007, <http://www.crosswalk.com/news/religiontoday/11562299/>; *Gaza Christians warned to submit to Islam*, LiveLeak.com, (Sheikh Abu Saqer’s interview with WorldNetDaily.com), http://www.liveleak.com/view?i=d93_1182388780 (last visited Jan. 4, 2008).

ever-decreasing number who are subjected to continual violence and persecution. Israel is the only Middle Eastern nation where the raw number of Christians has slowly increased.¹⁹⁹

In the Palestinian territories, the Christian population has dropped sharply since World War II. For example, the Christian population in Bethlehem was 80 percent and has dropped to 20 percent; Nazareth's population was 60 percent Christian, but today has dropped by half to 30 percent. Similarly, today Christians compose a mere 2 percent of Jerusalem's population.²⁰⁰ The drop in population is the likely result of widespread persecutions of Christians reported in the Territories, particularly of those who have converted from Islam. Such reports include unfounded arrests and brutal treatment of converts and their families at the hands of security forces, boycotts and burnings of Christian businesses, and even the attempted burning of established Christian churches in Ramallah.²⁰¹ One pastor from Ramallah recently "fled to Jerusalem after receiving several threats against his life and was refused protection by Palestinian officials."²⁰² Pastor Isa Bajalia was told that his arms and legs would be broken and that his knee caps would be shot.²⁰³

Bethlehem, the birthplace of Jesus and a focal point of the Christian faith, has continued to experience a mass exodus of Christians because of persecution. In a 1991 interview, the late Elias Freij, then mayor of Bethlehem, said, "It is hard to be a Christian here."²⁰⁴ Since that time, the situation has worsened. In 1995, the Palestinian Authority took control of Bethlehem; subsequently and the persecution of Christians has steadily increased. Christians "express fear for their families and mention the intimidation: violence and daily harassment they are subjected to at the hands of the Palestinian Authority and various Islamic terrorist groups belonging to Hamas as well as Fatah."²⁰⁵ The First Baptist Church of Bethlehem, which provides aid to persecuted Christians, has been bombed some fourteen times in recent years and its pastor has survived several assassination attempts.²⁰⁶

Gaza is especially violent and currently only two to three thousand Christians live there amongst approximately 1.5 million Muslims. Recent reports include 1) the pillaging of a

¹⁹⁹ *What has happened to Christians, supra* note 152.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Nicole Jansezian, *Pastor Flees PA after Threats on his Life*, *Israel Today*, Nov. 11, 2007, <http://www.israeltoday.co.il/default.aspx?tabid=128&view=item&idx=1608>.

²⁰³ *Id.*

²⁰⁴ Joseph Puder, *'National Geographic' And Bethlehem 2007*, *The Evening Bulletin*, Dec. 19, 2007, *available at* http://www.thebulletin.us/site/news.cfm?newsid=19129371&BRD=2737&PAG=461&dept_id=623508&rfti=6.

²⁰⁵ *Id.*

²⁰⁶ *Christian Arabs, supra* note 150.

convent; 2) the brutal murder of a Christian bookstore owner whose body was found after he was “kidnapped with two gunshot wounds, one to the back of the head, stab wounds and with a blow to the head”;²⁰⁷ and 3) the attempted abduction of a Gaza Christian as he left work at a Baptist church.²⁰⁸ Gaza Baptist Church, which is the only evangelical church in the Gaza Strip, has at various times been “commandeer[ed]” by conflicting “Palestinian faction[s] . . . as a lookout point. Once, a library worker was literally caught in the crossfire and shot in the back.”²⁰⁹ The Hamas government in Gaza attempts to show a moderate face for the world community and publicly condemns the persecution of Christians. However, recent reports of violence belie their moderate positions. In fact, elements allied with the Hamas government have openly expressed their intent to forcibly convert non-Muslims or drive them from the land.²¹⁰

There have been multiple incidents of violence and harassment of Christians living in Gaza; for example, the manager of Gaza’s only Christian bookstore was kidnapped and murdered in October.²¹¹ The store had been firebombed six months before the kidnapping, and the victim had been the target of death threats prior to the kidnapping.²¹² One commentator has noted that the Gaza Christian community “[t]eeter[s] on the brink of extinction at the hands of the ‘Religion of Peace.’”²¹³ The writer reported the “systematic destruction of churches and desecration of religious objects . . . following the HAMAS takeover of the Gaza strip . . . and the imposition of Islamic rule.”²¹⁴ The militant leader of the Hamas group Jihadia Salafiya has stated that Christian missionaries will be “dealt with harshly.”²¹⁵ The same group is also suspected of a recent terrorist attack on a United Nations school—one person was killed in that attack.²¹⁶

²⁰⁷ Ryan Jones, *Persecuted for His Name’s Sake*, Israel Today, Oct. 10, 2007, <http://www.israeltoday.co.il/default.aspx?tabid=132&view=item&idx=1551>; see also *Christian Arabs*, *supra* note 150.

²⁰⁸ Wooding, *supra* note 198.

²⁰⁹ Nicole Jansezian, *Gaza’s Forgotten Christians*, Israel Today, June 10, 2007, <http://www.israeltoday.co.il/default.aspx?tabid=132&view=item&idx=1413>. Fortunately, the worker fully recovered. *Id.*

²¹⁰ Wooding, *supra* note 198.

²¹¹ *Id.*

²¹² *Id.*

²¹³ Patrick Poole, *Islam’s Global War Against Christianity*, The American Thinker, July 5, 2007, available at http://www.americanthinker.com/2007/07/islams_global_war_against_chri.html.

²¹⁴ *Id.*

²¹⁵ Aaron Klein, *Christians Must Accept Islamic Rule*, YNet News, June 19, 2007, available at <http://www.ynetnews.com/articles/0,7340,L-3414753,00.html>.

²¹⁶ *Id.*

VI. Abuse of Christian Property Rights in Palestinian Controlled Areas

Reports indicate that the PA has a long history of disrespect for Christian property rights in the Palestinian territories. For example, in 1997, the PLO seized Abraham's Oak Russian Holy Trinity Monastery in Hebron, and subsequently evicted all of the Monastery's priests and nuns.²¹⁷ In perhaps the most egregious action regarding the abuse of Christian property, a group of Palestinian militants and civilians overtook the Church of the Nativity in Bethlehem in April of 2002. A thirty-nine day standoff ensued between the Palestinians inside the church and the pursuing Israeli army, which ultimately led to the return of the church to the priests. The property, however, had been severely desecrated with urine, dirty junk, and left-over food, although no permanent damage was done.²¹⁸ This harassment has continued since Hamas took over the Gaza strip in mid 2007. Despite assurances by Hamas that it would protect Christians in Gaza, the Latin Church has been ransacked and Rosary Sisters School in Gaza City has been looted and its ritual objects destroyed.²¹⁹

According to media reports, the disregard for Christian property has resulted in further allegations of continued illegal property seizure perpetrated against Christian citizens within the Palestinian territories. Most of these reported instances involve schemes where Muslim mafia members present forged legal documents to the landowners that show the land belongs to them and force the Christian owners out.²²⁰ If the Christians resist they are often threatened or even beaten.²²¹ One such reported instance occurred in Bethlehem.²²² Faud Lama and his wife had their land stolen by local Muslims, including an attorney and a PA official.²²³ According to a media report, senior PA officers later offered to help the couple for 1,000 dollars, but when the couple paid the money, the officials merely kept it and did nothing.²²⁴ When Mr. Lama tried to

²¹⁷ Yoram Ettinger, *The Islamization of Bethlehem by Arafat*, Jerusalem Cloakroom, <http://www.acpr.org.il/cloakrm/clk117.html> (last visited Dec. 21, 2007).

²¹⁸ *Church of Nativity a Mess, but Suffers Little Permanent Damage*, Foxnews.com, May 10, 2002, http://www.foxnews.com/printer_friendly_story/0,3566,52445,00.html (last visited Dec. 21, 2007).

²¹⁹ Khaled Abu Toameh, *Church destroyed in Gaza, Gaza's Christians fear for their lives*, The Jerusalem Post, June 18, 2007, available at

<http://www.jpost.com/servlet/Satellite?cid=1181813061916&pagename=JPost%2FJPArticle%2FShowFull>.

²²⁰ See 'Not a single Christian' in birthplace of Christ, Worldnetdaily.com, Sept. 24, 2007, http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=57797.

²²¹ *Id.*

²²² Khaled Abu Toameh, *Bethlehem Christians fear neighbors*, The Jerusalem Post, Jan. 25, 2007, available at <http://www.jpost.com/servlet/Satellite?cid=1167467807655&pagename=JPost%2FJPArticle%2FShowFull>.

²²³ *Id.*

²²⁴ *Id.*

confront the men, the 69 year-old was beaten and threatened.²²⁵ The couple then sent a letter to Palestinian President Abbas who subsequently promised to launch an investigation. As of early 2007, nothing had been done.²²⁶

The U.S. State Department's 2007 Religious Freedom Report confirms the growing problem of direct and indirect violations of Christian property rights in the Palestinian territories.²²⁷ The Report recognizes that the Palestinian government in the occupied territories has not done enough to protect the property rights of Christians.²²⁸ According to the Report, there have been numerous incidents, similar to that of the Lamas, that have been reported, and the government has failed to deal with the illegal seizures. In some cases, it is alleged that the Palestinian authorities themselves have been involved in the takings. These attacks on Christians appear to go unpunished, while perpetrators against Muslim citizens within the same geographic areas are proactively brought to justice.²²⁹

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *International Religious Freedom Report 2007, supra note 19.*

²²⁸ *Id.*

²²⁹ *Id.*

APPENDIX

Table of Contents

I. Translated Laws

- A. Law of Return, 5710-1950, § 1, 4 L.S.I. 114 (1949-50) (Isr.), English Translation *available at* http://www.mfa.gov.il/MFA/MFAArchive/1950_1959/Law+of+Return+5710-1950.htm.
- B. Law of Return (Amendment No. 2), 5730-1970, § 4A(a), 24 L.S.I. 28 (1970) (Isr.), English Translation *available at* http://www.mfa.gov.il/MFA/MFAArchive/1950_1959/Law+of+Return+5710-1950.htm.
- C. Nationality Law, 5712-1952, 6 L.S.I. 50 (1951-52) (Isr.), English summary *available at* <http://www.geocities.com/savepalestinenow/israellaws/fulltext/nationalitylaw.htm>.
- D. The Amended Basic Law, Official Gazette, Mar. 19, 2003 [hereafter “Amended Basic Law”], *available at* http://www.usaid.gov/wbg/misc/Amended_Basic_Law.pdf (last visited Jan. 4, 2008).
- E. Universal Islamic Declaration of Human Rights, Sep. 19, 1981, *available at* <http://www.alhewar.com/ISLAMDEC.html>.
- F. Protection of Holy Places Law, 5727-1967, 21 L.S.I. 76 (1966-67) (Isr.), English translation, *available at* <http://www.knesset.gov.il/laws/special/eng/HolyPlaces.htm>.

II. U.S. Department of State Reports

- A. Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, *International Religious Freedom Report 2007: Israel and the Occupied Territories*, *available at* <http://www.state.gov/g/drl/rls/irf/2007/90212.htm>.
- B. Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, *International Religious Freedom Report 2006: Israel and the Occupied Territories*, *available at* <http://www.state.gov/g/drl/rls/irf/2006/71423.htm>.

III. Documents from the Israel Ministry of Foreign Affairs

- A. Israel Ministry of Foreign Affairs, Cabinet Communique, Dec. 16, 2007, <http://www.mfa.gov.il/MFA/Government/Communiques/2007/Cabinet+communi+que+16-Dec-2007.htm> Israel Ministry of Foreign Affairs, Cabinet Communique, 16 Dec. 2007, <http://www.mfa.gov.il/MFA/Government/Communiques/2007/Cabinet+communi+que+16-Dec-2007.htm>.
- B. Israel Ministry of Foreign Affairs, *Focus on Israel: The Christian Communities of Israel*, <http://www.mfa.gov.il/MFA/Facts+About+Israel/People/Focus+on+Israel+-+The+Christian+Communities+of+Isr.htm> (last visited Jan. 4, 2008).
- C. Israel Ministry of Foreign Affairs, *Society: Religious Freedom*, <http://www.mfa.gov.il/MFA/Facts%20About%20Israel/People/SOCIETY-%20Religious%20Freedom>.

- D. Shimon Shetreet, *Freedom of Religion in Israel*, Mfa.gov.il, Aug. 20 2001, http://www.mfa.gov.il/MFA/MFAArchive/2000_2009/2001/8/Freedom%20of%20Religion%20in%20Israel.

IV. Treaties

- A. Fundamental Agreement, Israel-Holy See, Dec. 30, 1993, *available at* http://www.mfa.gov.il/MFA/MFAArchive/1990_1999/1993/12/Fundamental%20Agreement%20-%20Israel-Holy%20See.
- B. Legal Personality Agreement, Israel-Holy See, Nov. 10, 1997, *available at* <http://www.mfa.gov.il/MFA/MFAArchive/1996-1997/Legal%20Personality%20Agreement-%20State%20of%20Israel-Holy>.

I. Translated Laws

- A. Law of Return, 5710-1950, § 1, 4 L.S.I. 114 (1949-50) (Isr.), English Translation available at http://www.mfa.gov.il/MFA/MFAArchive/1950_1959/Law+of+Return+5710-1950.htm.

Law of Return 5710-1950

*Right of aliyah***

1. Every Jew has the right to come to this country as an oleh**.

Oleh's visa

2. (a) Aliyah shall be by oleh's visa.

(b) An oleh's visa shall be granted to every Jew who has expressed his desire to settle in Israel, unless the Minister of Immigration is satisfied that the applicant

(1) is engaged in an activity directed against the Jewish people; or

(2) is likely to endanger public health or the security of the State.

Oleh's certificate

3. (a) A Jew who has come to Israel and subsequent to his arrival has expressed his desire to settle in Israel may, while still in Israel, receive an oleh's certificate.

(b) The restrictions specified in section 2(b) shall apply also to the grant of an oleh's certificate, but a person shall not be regarded as endangering public health on account of an illness contracted after his arrival in Israel.

Residents and persons born in this country

4. Every Jew who has immigrated into this country before the coming into force of this Law, and every Jew who was born in this country, whether before or after the coming into force of this Law, shall be deemed to be a person who has come to this country as an oleh under this Law.

Implementation and regulations

5. The Minister of Immigration is charged with the implementation of this Law and may make regulations as to any matter relating to such implementation and also as to the grant of oleh's visas and oleh's certificates to minors up to the age of 18 years.

DAVID BEN-GURION

Prime Minister

MOSHE SHAPIRA

Minister of Immigration

YOSEF SPRINZAK

Acting President of the State

Chairman of the Knesset

* Passed by the Knesset on the 20th Tammuz, 5710 (5th July, 1950) and published in Sefer Ha-Chukkim No. 51 of the 21st Tammuz, 5710 (5th July, 1950), p. 159; the Bill and an Explanatory Note were published in Hatz'ot Chok No. 48 of the 12th Tammuz, 5710 (27th June, 1950), p. 189.

** Translator's Note: Aliyah means immigration of Jews, and oleh (plural: olim) means a Jew immigrating, into Israel.

- B. Law of Return (Amendment No. 2), 5730-1970, § 4A(a), 24 L.S.I. 28 (1970) (Isr.), English Translation available at http://www.mfa.gov.il/MFA/MFAArchive/1950_1959/Law+of+Return+5710-1950.htm.

Law of Return (Amendment No. 2) 5730-1970*

Addition of sections 4A and 4B 1. In the Law of Return, 5710-1950**, the following sections shall be inserted after section 4:

"Rights of members of family

4A. (a) The rights of a Jew under this Law and the rights of an *oleh* under the Nationality Law, 5712-1952***, as well as the rights of an *oleh* under any other enactment, are also vested in a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion.

(b) It shall be immaterial whether or not a Jew by whose right a right under subsection (a) is claimed is still alive and whether or not he has immigrated to Israel.

(c) The restrictions and conditions prescribed in respect of a Jew or an *oleh* by or under this Law or by the enactments referred to in subsection (a) shall also apply to a person who claims a right under subsection (a).

Definition

4B. For the purposes of this Law, "Jew" means a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion."

Amendment of section 5 2. In section 5 of the Law of Return, 5710-1950, the following shall be added at the end: "Regulations for the purposes of sections 4A and 4B require the approval of the Constitution, Legislation and Juridical Committee of the Knesset."

Amendment of the Population Registry Law, 5725-1965 3. In the Population Registry Law, 5725-1965****, the following section shall be inserted after section 3:

"Power of registration and definition

3A. (a) A person shall not be registered as a Jew by ethnic affiliation or religion if a notification under this Law or another entry in the Registry or a public document indicates that he is not a Jew, so long as the said

notification, entry or document has not been controverted to the satisfaction of the Chief Registration Officer or so long as declaratory judgment of a competent court or tribunal has not otherwise determined.

(b) For the purposes of this Law and of any registration or document thereunder, "Jew" has the same meaning as in section 4B of the Law of Return, 5710-1950.

(c) This section shall not derogate from a registration effected before its coming into force."

GOLDA MEIR

Prime Minister

Acting Minister of the Interior

SHNEUR ZALMAN SHAZAR

President of the State

* Passed by the Knesset on 2nd Adar Bet, 5730 (10th March, 1970) and published in Sefer Ha-Chukkim No. 586 of the 11th Adar Bet, 5730 (19th March, 1970), p. 34; the Bill and an Explanatory Note were published in Hatza'ot Chok No. 866 of 5730, p. 36.

** Sefer Ha-Chukkim of 5710 p. 159 - LSI vol. IV, p. 114; Sefer Ha-Chukkim No. 5714, p. 174 - LSI vol. VIII, p. 144.

*** Sefer Ha-Chukkim of 5712, p. 146 ; LSI vol. VI, p. 50.

**** Sefer Ha-Chukkim of 5725, p. 270 ; LSI vol. XIX, p. 288.

- C. Nationality Law, 5712-1952, 6 L.S.I. 50 (1951-52) (Isr.), English summary *available at* <http://www.geocities.com/savepalestinenow/israellaws/fulltext/nationalitylaw.htm>.

NATIONALITY LAW, 5712-1952*
PART ONE: ACQUISITION OF NATIONALITY

Preliminary.

1. Israel nationality is acquired-

- by return (section 2),
- by residence in Israel (section 3),
- by birth (section 4) or
- by naturalisation (section 5 to 9).
- There shall be no Israel nationality save under this Law.

Nationality by Return.

2.

- (a) Every '*oleh*** under the Law of Return, 5710-1950⁽¹⁾, shall become an Israel national.
- (b) Israel nationality by return is acquired-
 - (1) by a person who came as an '*oleh* into, or was born in, the country before the establishment of the State - with effect from the day of the establishment of the State;
 - (2) by a person having come to Israel as an '*oleh* after the establishment of the State - with effect from the day of his '*aliyah***;
 - (3) by a person born in Israel after the establishment of the State - with effect from the day of his birth;
 - (4) by a person who has received an '*oleh*'s certificate under section 3 of the Law of Return, 5710-1950 - with effect from the day of the issue of the certificate.
- (c) This section does not apply-
 - (1) to a person having ceased to be an inhabitant of Israel before the coming into force of this Law;
 - (2) to a person of full age who, immediately before the day of his '*aliyah* or the day of his '*oleh*'s certificate is a foreign national and who, on or before such day, declares that he does not desire to become an Israel national;
 - (3) to a minor whose parents have made a declaration under paragraph (2) and included him therein.

Nationality by Residence in Israel.

3.

- (a) A person who, immediately before the establishment of the State, was a Palestinian citizen and who does not become a Israel national under section 2, shall become an Israel national with effect from the day of the establishment of the State if -
 - (1) he was registered on the 4th Adar, 5712 (1st March 1952) as an inhabitant under the Registration of Inhabitants Ordinance, 5709-1949⁽²⁾; and
 - (2) he is an inhabitant of Israel on the day of the coming into force of this Law; and
 - (3) he was in Israel, or in an area which became Israel territory after the establishment of the State, from the day of the establishment of the State to the

- day of the coming into force of this Law, or entered Israel legally during that period.
- (b) A person born after the establishment of the State who is an inhabitant of Israel on the day of the coming into force of this Law, and whose father or mother becomes an Israel national under subsection (a), shall become an Israel national with effect from the day of his birth.

Nationality by Birth.

4. A person born while his father or mother is an Israel national shall be an Israel national from birth; where a person is born after his father's death, it shall be sufficient that his father was an Israel national at the time of his death.

Naturalisation.

5.

- (a) A person of full age, not being an Israel national, may obtain Israel nationality by naturalisation if -
 - (1) he is in Israel; and
 - (2) he has been in Israel for three years out of five years proceeding the day of the submission of his application; and
 - (3) he is entitled to reside in Israel permanently; and
 - (4) he has settled, or intends to settle, in Israel, and
 - (5) he has some knowledge of the Hebrew language, and
 - (6) he has renounced his prior nationality or has proved that he will cease to be a foreign national upon becoming an Israel national.
- (b) Where a person has applied for naturalisation, and he meets the requirements of subsection (a), the Minister of the Interior, if he thinks fit to do so, shall grant him Israel nationality by the issue of a certificate of naturalisation.
- (c) Prior to the grant of nationality, the applicant shall make the following declaration: "I declare that I will be a loyal national of the State of Israel."
- (d) Nationality is acquired on the day of the declaration.

Exemption from conditions of naturalisation.

6.

- (a)
 - (1) A person who has served in the regular service of the Defence Army of Israel or who, after the 16th Kislev, 5708 (29th November 1947) has served in some other service which the Minister of Defence, by declaration published in *Reshumot*, has declared to be military service for the purpose of this section, and who has been duly discharged from such service; and
 - (2) a person who has lost a son or daughter in such service, are exempt from the requirements of section 5 (a), except the requirement of section 5 (a) (4).
- (b) A person applying for naturalisation after having made a declaration under section 2 (c) (2) is exempt from the requirement of section 5 (a) (2).
- (c) A person who immediately before the establishment of the State was a Palestinian citizen is exempt from the requirement of section 5 (a) (5).

- (d) The Minister of the Interior may exempt an applicant from all or any of the requirements of section 5 (a) (1), (2), (5) and (6) if there exists in his opinion a special reason justifying such exemption.

Naturalisation of husband and wife.

7. The spouse of a person who is an Israel national or who has applied for Israel nationality and meets or is exempt from the requirements of section 5 (a) may obtain Israel nationality by naturalisation even if she or he is a minor or does not meet the requirements of section (5) (a).

Naturalisation Minors.

8. Naturalisation confers Israel nationality also upon the minor children of the naturalised person.

Grant of Nationality to Minors.

9.

- (a) Where a minor, not being an Israel national, is an inhabitant of Israel, and his parents are not in Israel or have died or are unknown, the Minister of the Interior, on such conditions and with effect from such day as he may think fit, may grant him Israel nationality by the issue of a certificate of naturalisation.
- (b) Nationality may be granted as aforesaid upon the application of the father or mother of the minor or, if they have died or are unable to apply, upon the application of the guardian or person in charge of the minor.

PART TWO: LOSS OF NATIONALITY

Renunciation of Nationality.

10.

- (a) An Israel national of full age, not being an inhabitant of Israel, may declare that he desires to renounce his Israel nationality; such renunciation is subject to the consent of the Minister of the Interior; the declarant's Israel nationality terminates on the day fixed by the Minister.
- (b) The Israel nationality of a minor, not being an inhabitant of Israel, terminates upon his parents' renouncing their Israel nationality; it does not terminate so long as one of his parents remains an Israel national.

Revocation of Naturalisation.

11.

- (a) Where a person, having acquired Israeli nationality by naturalisation -
 - (1) has done so on the basis of false particulars; or
 - (2) has been abroad for seven consecutive years and has no effective connection with Israel, and has failed to prove that his effective connection with Israel was severed otherwise than by his own volition; or
 - (3) has committed an act of disloyalty towards the State of Israel, a District Court may, upon the application of the Minister of the Interior, revoke such person's naturalisation.

- (b) The Court may, upon such application, rule that the revocation shall apply also to such children of the naturalised person as acquired Israel nationality by virtue of his naturalisation and are inhabitants of a foreign country.
- (c) Israel nationality terminates on the day on which the judgment revoking naturalisation ceases to be appealable or on such later day as the Court may fix.

Saving of Liability.

12. Loss of Israel nationality does not relieve from a liability arising out of such nationality and created before its loss.

PART THREE: FURTHER PROVISIONS

Interpretation.

13. In this Law -

"of full age" means of the age of eighteen years or over;

"minor" means a person under eighteen years of age;

"child" includes an adopted child, and "parents" includes adoptive parents;

"foreign nationality" includes foreign citizenship, and "foreign national" includes a foreign citizen, but does not include a Palestinian citizen.

Dual nationality and dual residence.

14.

- (a) Save for the purposes of naturalisation, acquisition of Israel nationality is not conditional upon renunciation of a prior nationality.
- (b) An Israel national who is also a foreign national shall, for the purposes of Israel law, be considered an Israel national.
- (c) An inhabitant of Israel residing abroad shall, for the purposes of this Law, be considered an inhabitant of Israel so long as he has not settled abroad.

Evidence of Nationality.

15. An Israel national may obtain from the Minister of the Interior a certificate attesting his Israel nationality.

Offence.

16. A person who knowingly gives false particulars as to a matter affecting his own or another person's acquisition or loss of Israel nationality is liable to imprisonment for a term not exceeding six months or to fine not exceeding five hundred pounds, or to both such penalties.

Implementation and regulations.

17.

- (a) The Minister of the Interior is charged with the implementation of this Law and may make regulations as to any matter relating to its implementation, including the payment of fees and exemption from the payment thereof.
- (b) The Minister of Justice may make regulations as to proceedings in District Courts under this Law, including appeals from decisions of such Courts.

Repeal, adaptation of laws and validation.

18.

- (a) The Palestinian Citizenship Orders, 1925-1942⁽³⁾, are repealed with effect from the day of the establishment of the State.
- (b) Any reference in any provision of law to Palestinian citizenship or Palestinian citizens shall henceforth be read as a reference to Israel nationality or Israel nationals.
- (c) Any act done in the period between the establishment of the State and the day of the coming into force of this Law shall be deemed to be valid if it were valid had this Law been in force at the time it was done.

Commencement.

19.

- (a) This Law shall come into force on the 21st Tammuz, 5712 (14th July, 1952).
- (b) Even before that day, the Minister of the Interior may make regulations as to declarations under section 2(c)(2).

MOSHE SHARETT

Minister of Foreign Affairs

MOSHE SHAPIRA

Minister of the Interior

YOSEF SPRINZAK

Chairman of the Knesset

Acting President of the State

* Passed by the Knesset on the 6th Nisan, 5712 (1st April, 1952). and published in *Sefer Ha-Chukkim* No. 95 of the 13th Nisan, 5712 (8th April, 1952), P. 146; the Bill was published in *Hatza'ot Chok* No. 93 of the 22nd Cheshvan, 5712 (21st November, 1951), p. 22.

** Translator's Note: '*oleh*' and '*aliyah*' mean respectively a Jew immigrating, and the immigration of a Jew, into the Land of Israel.

⁽¹⁾ *Sefer Ha-Chukkim* No. 51 of the 21st Tammuz, 5710 (6th July, 1950), p. 159.

⁽²⁾ *I.R.* No. 48 of the 5th Shevat, 5709 (4th February, 1949), Suppl. I, p. 164.

⁽³⁾ *Palestine Gazette* No. 1210 of the 16th July, 1942, Suppl. 11, p. 1193 (English Edition).

- D. The Amended Basic Law, Official Gazette, March 19, 2003, *available at* http://www.usaid.gov/wbg/misc/Amended_Basic_Law.pdf.

THE AMENDED BASIC LAW

PUBLISHED IN THE OFFICIAL GAZETTE ON: MARCH 19, 2003
CORRESPONDING TO: MUHARAM 16, 1424 H, EXCELLENT ISSUE NO. 2

In The Name of God, The Merciful, The Compassionate **Introduction**

Preamble (Explanatory Memorandum) for the Amended Basic Law

Based on Article (111) of the Basic Law, which provides that the Legislative Council has the authority to amend the Basic Law by securing a majority of two-third of its Members. The Council believes that it is necessary to amend the Basic Law, to allow the creation of the Prime Minister Position in the Palestinian National Authority, to transfer his authorities, jurisdiction, and all legal and political controls which regulate his work, as well as define and clarify the form of relationship that links him with the President of the Palestinian National Authority and the Legislative branch.

This amendment requires re-arrangement of some provisions of the original law. Accordingly, the Title which deals with the authorities of the President of the National Authority is now Title Three in the Amended law. On the other hand, the Title which deals with the Legislative branch has been moved under another title which is Title Four.

However, Article Five which deals with the Council of Ministers, includes the method of forming the cabinet by the Prime Minister, how it obtains the confidence of the Council, the authorities vested in the Council of Ministers and its head, and the form of the relationship between the Prime Minister and the President of the National Authority.

The Council decided during the review of the Amended Law that it is not necessary to add paragraphs or provisions that deals with Prime Minister's presentation of every thing related to the formation, resignation, or ousting the cabinet, to the President of the National Authority, on the basis that it is a political tradition, that does not necessitate putting it in a separate article in the text of the law.

Ahmed Qurei' (Abu Ala')

Speaker

Palestinian Legislative Council

Title ONE

Article (1)

Palestine is part of the large Arab World, and the Palestinian people are part of the Arab Nation. Arab Unity is an objective which the Palestinian People shall work to achieve.

Article (2)

The People is the source of power, which shall be exercised through the legislative, executive, and judicial authorities, based on the principle of separation of powers, and in the manner set forth in this Basic Law.

Article (3)

Jerusalem is the Capital of Palestine.

Article (4)

1. Islam is the official religion in Palestine. Respect and sanctity of all other heavenly religions shall be maintained.
2. The principles of Islamic Shari'a shall be the main Source of legislation.
3. Arabic shall be the official language.

Article (5)

The governing system in Palestine shall be a democratic parliamentary system based on political and party pluralism. The President of the National Authority shall be directly elected by people. The Government shall be responsible before the President and the Palestinian Legislative Council.

Article (6)

The principle of the rule of law shall be the basis of governing in Palestine. All authorities, powers, agencies, institutions and individuals shall be subject to law.

Article (7)

Palestinian citizenship shall be regulated by law.

Article (8)

The flag of Palestine shall be in four colors, and in accordance with the dimensions and measurement approved by the Palestinian Liberation Organization. It shall be the official flag of the country.

**TITLE TWO
PUBLIC RIGHTS & FREEDOMS**

Article (9)

All Palestinians are equal under the law and judiciary, without discrimination because of race, sex, color, religion, political views, or disability.

Article (10)

1. Basic human rights and freedoms shall be binding and respected.
2. The Palestinian National Authority shall work without delay to join regional and international declarations and covenants which protect human rights.

Article (11)

1. Personal freedom is a natural right, and shall be guaranteed and protected.
2. It is unlawful to arrest, search, imprison, restrict the freedom, or prevent the movement of, any person, except by judicial order in accordance with the provisions of law. The law shall specify the period pre-arrest detention. Imprisonment or detention shall only be permitted in places that are subject to laws related to the organization of prisons.

Article (12)

Every arrested person shall be informed of the reasons for his arrest or detention. He shall be promptly informed, in a language he understands, of the nature of the charges brought against him. He shall have the right to contact a lawyer and to be tried without delay.

Article (13)

1. No person shall be subject to any duress or torture. Indictees and all persons deprived of their freedom shall receive proper treatment.
2. All statements or confessions obtained through violation of paragraph one of this article shall be considered null and void.

Article (14)

The accused is innocent until proven guilty in a court of law that guarantees the right to defend himself. Any person accused in a criminal case shall have a lawyer to defend him.

Article (15)

Punishment shall only be imposed upon individuals. Collective punishment is prohibited. Crime and punishment shall only be determined by law. Punishment shall be imposed only by judicial judgment, and shall apply only to actions committed after the promulgation of law.

Article (16)

It is unlawful to conduct any medical or scientific experiment on any person without his prior legal consent. No person shall be subject to medical examination, treatment, or surgery, except in accordance with law.

Transplantation of human organs, and other new scientific developments, which serve legitimate humanitarian purposes, shall be regulated by law.

Article (17)

Homes shall be inviolable; thus, they shall not be subject to surveillance, entrance or search, except in accordance with a valid judicial order, and in accordance with the provisions of law. Any consequences resulting from violations of this article shall be considered invalid. Individuals who suffer from such violation shall be entitled to fair compensation guaranteed by the Palestinian National Authority.

Article (18)

Freedom of belief, worship, and performance of religious rituals are guaranteed, provided that they do not violate public order or public morals.

Article (19)

Every person shall have the right to freedom of thought, conscience and expression, and shall have the right to publish his opinion orally, in writing, or in any form of art, or through any other form of expression, provided that it does not contradict with the provisions of law.

Article (20)

Freedom of residence and movement shall be guaranteed within the limits of law.

Article (21)

1. The economic system in Palestine shall be based on the principle of free market economy. The Executive Authority may establish public companies which shall be organized in accordance with law.
2. The freedom of economic activity is guaranteed. The law shall organize its supervising rules and limitations.
3. Private property shall be protected and, shall not be expropriated except in the public interest, and for a fair compensation in accordance with the law, or pursuant to a judicial order.
4. Confiscation shall be in accordance with a judicial order.

Article (22)

1. Social, health, disability, and retirement insurance shall be regulated by law.
2. The welfare of families of martyrs', prisoners of war, the injured, and the disabled is a duty that shall be regulated by law. The National Authority shall guarantee them education, health services, and social insurance.

Article (23)

Proper housing is a right for every citizen. The Palestinian National Authority shall secure housing for those without shelter.

Article (24)

1. Every citizen shall have the right to education. It shall be compulsory until at least the end of basic grades, and shall be free in public schools and institutes.
2. The Palestinian National Authority shall supervise all levels of education and its institutions, and shall strive to upgrade the educational system.
3. The Law shall guarantee the independence of universities, higher institutes, and scientific research centers, in a manner that guarantees the freedom of scientific research, as well as literary, artistic, and cultural creativity. The Palestinian National Authority shall encourage and support such creativity.
4. Private schools and educational institutions shall comply with the curriculum approved by the Palestinian National Authority, and shall be subject to its supervision.

Article (25)

1. Work is a right, duty and honor. The Palestinian National Authority shall strive to provide it to any individual capable of performing it.
2. Work relations shall be organized in a manner which guarantees justice to all workers, and provides security, health, and social insurance.
3. Organization of unions and guilds is a right which shall be regulated by law.
4. The right to conduct a strike shall be exercised within the limits of law.

Article (26)

Palestinians shall have the right to participate in the political life individually and in groups. They shall have the following rights in particular:

1. To form, establish, and join political parties in accordance with the law.

2. To form and establish unions, guilds, associations, societies, clubs, and popular institutions in accordance with the law.
3. To Vote and nominate for election, representatives among them by ballot in accordance with the law.
4. To hold public office and positions in accordance with the principle of equal opportunities.
5. To conduct special meetings without the presence of police members, and to conduct public meetings, processions, and assemblies, within the limits of law.

Article (27)

1. Establishment of newspapers and all media means is a right for all, guaranteed by this Basic Law. However, their financing resources shall be subject to law.
2. Freedom of audio, visual, and written media, as well as freedom to print, publish, distribute, transmit, together with the freedom of individuals working in this field, is guaranteed by this Basic Law, and other related laws.
3. Censorship on media shall be prohibited. No warning, suspension, confiscation, cancellation, or restrictions shall be imposed on media except by law, and in accordance with a judicial ruling.

Article (28)

No Palestinian may be deported from the homeland, prevented or prohibited from returning to or leaving it, deprived of his (citizenship), or surrendered to any foreign entity.

Article (29)

Maternity and childhood welfare is a national duty. Children shall have the right to:

1. Comprehensive protection and welfare
2. Not to be exploited in any purpose whatsoever, and shall not be allowed to perform works which might damage their safety, health, or education.
3. Protection from harm and cruel treatment
4. Law prohibits beating children and treating them cruelly by their relatives.
5. Shall be segregated in case they are sentenced, form adults, and be treated in a manner which is appropriate to their age and rehabilitation.

Article (30)

1. Litigation is a protected and guaranteed right to all people. Each Palestinian shall have the right to find sanctuary in the legal system. Litigation procedures shall be organized by law to guarantee prompt settlement of cases.
2. Laws shall not make any decision or administrative work immune against judicial control.
3. Judicial mistakes shall result in compensation by the National Authority. Conditions and methods of such compensation shall be regulated by law.

Article (31)

An independent commission for human rights shall be established by law, which will specify its formation, duties, jurisdiction. The Commission shall submit its reports to the President of the National Authority, and to the Palestinian Legislative Council.

Article (32)

Each aggression committed against any personal freedom, against private life of human being, or against any of rights or freedom, which have been guaranteed by the law or by this basic law, shall be considered as a crime. Criminal and civil case resultant from such infringement shall not be subject to any status of limitation. The National Authority shall guarantee fair indemnity for those who suffered from such damages.

Article (33)

A balanced and clean environment is one of the human rights. The preservation and protection of the Palestinian environment from pollution, for the sake of present and future generation, is a national duty.

TITLE THREE
The President of the Palestinian National Authority

Article (34)

The President of the Executive Authority shall be elected in a general and direct elections by the Palestinian People in accordance with the Palestinian Election Law.

Article (35)

Before assuming office, the President shall take the following oath before the Legislative Council, and in the presence of the Speaker of the Palestinian National Council, the Chief of Supreme Court “I swear to God, The Almighty to be faithful to the Homeland and to its sacred places, to the people and its national heritage, to respect the Constitutional system and the law, and to safeguard the interests of the Palestinian people completely, as God is my witness”.

Article (36)

The term of the Presidency of the National Authority shall be the Transitional “Interim” Phase, after which the President shall be elected in accordance with law.

Article (37)

1. The office of the President shall be considered vacant in any of the following cases:
 - a. Death
 - b. Resignation submitted to the Palestinian Legislative Council if accepted by two thirds of its Members.
 - c. Considered legally incompetent, as per a ruling issued by the Supreme Constitutional Court, and subsequently approved by two thirds of the Palestinian Legislative Council Members.
2. If the office of the President of the National Authority becomes vacant due to any of the above cases, the Speaker of the Palestinian Legislative Council shall temporarily assume the powers and duties of the Presidency of the National Authority, for a period not to exceed (60) sixty days, during which free and direct elections to elect a new president shall take place in accordance with the Palestinian Elections Law.

Article (38)

The President of the National Authority shall exercise his executive powers and missions as specified in this law.

Article (39)

The President is the Commander-in-Chief of the Palestinian Forces.

Article (40)

The President of the National Authority shall appoint and terminate the services of the National Authority's representatives at foreign countries, international organizations and foreign agencies. Further, the President shall accept the credentials of foreign representatives at the Palestinian National Authority.

Article (41)

1. The President of the National Authority shall promulgate laws after being ratified by the Palestinian Legislative Council within (30) thirty days from referring them to him. Otherwise, the President shall return the laws to the Council within the same specified period, together with his comments and objections, or else, the laws shall be considered approved and promulgated immediately in the Official Gazette.
2. If the President of the National Authority returns the proposed law to the Legislative Council, within the deadline and conditions mentioned in the previous paragraph, the Council shall debate again. However, if the Council passes it again with a two third majority, the proposed law shall be considered ratified and shall be immediately published in the Official Gazette.

Article (42)

The President of the National Authority has the right to pardon or commute sentences. General amnesty, or amnesty of a crime, however, shall not be granted except through a law.

Article (43)

The President of the National Authority shall have the right in exceptional cases, which can not be delayed, and while the Legislative Council is not in session, to issue decisions and decrees that have the power of law. However, the decisions issued shall be presented to the Legislative Council in the first session convened after their issuance, otherwise they will cease to have the power of law. If these decisions were presented as mentioned above, but were not approved, then they shall cease to have the power of law.

Article (44)

The President's salary, allowances and compensations shall be determined by a law.

Article (45)

The President of the National Authority shall select the Prime Minister, and task him to form his government. The President shall have the right to remove him, and to accept his resignation, as well as ask him to invite the Council of Ministers to convene

Article (46)

The Council of Ministers shall assist the President in the performance of his duties and the exercise of his powers in the manner stipulated in this Basic Law.

**TITLE FOUR
THE LEGISLATIVE AUTHORITY**

Article (47)

1. The Palestinian Legislative Council is the elected legislative authority.
2. Without prejudice to the provision of this law, the Legislative Council shall assume its legislative and oversight duties, as prescribed in its Standing Orders.
3. The term of this Council shall be the interim period.

Article (48)

1. The Legislative Council shall be composed of 88 Members elected in accordance with law.
2. If the position of one Member or more became vacant due to death, resignation, or loss of legibility, elections shall be conducted in the concerned constituency, to elect a successor, in accordance with law.

Article (49)

Before commencing work or assuming, every Member shall swear the following oath before the Council: -

“I swear by Allah The Almighty to BE faithful to the Homeland, to preserve the rights and interests of the people and nation, to respect law, and perform my duties in the best manner, as Allah is my witness”.

Article (50)

In its first meeting, the Council shall elect a Speaker, two deputies, and a Secretary General; in all they shall makeup the Presidency Office of the Council. It is not allowed to combine between Membership in the Presidency office of the Legislative Council, the Presidency of the Executive Authority, and membership in the Cabinet, or any other governmental position.

Article (51)

The Council shall accept the resignation of its Members, and establish its own Standing Orders, as well as rules of questioning its Members, in a way which does not contradict with the provisions of this Basic Law, or with the general constitutional principles. The Council shall be solely responsible for maintaining order and security during sessions and meetings of its committees. Security men shall not be present in the Council, unless requested by the Speaker, or by the Head of the Committee according to the situation.

Article (52)

The President of the Palestinian National Authority shall open the first ordinary session of the Council and deliver his opening statement.

Article (53)

1. Members of the Council shall not be questioned, through either a civil or criminal procedure, because of the opinions they express, facts they mentions, or votes in the Council’s sessions and Committees’ meetings, or because of any action they undertake outside the Council in the course of their functions as Members, to enable them perform their parliamentary mission.
2. No Members shall be disturbed in any manner, nor shall any search be made of his luggage, house, place of residence, car, or office, and in general any real estate or transferable property, throughout the period of immunity.

3. No Member of the Legislative Council shall be asked during the period of membership or subsequently , to testify on any subject related to his actions or statements or information he obtained as a result of his membership on the Council, unless he agrees to do so, and as per the prior consent of the Council.
4. No penal measures shall be taken against any Member of Legislative Council, unless the Member is found red-handed “Flagratne delicto”. However, the Council shall be notified immediately about the measures taken against the Member, so that the Council shall take the proper action in this regard. The Office of the Council shall assume this responsibility if the Council is not convened.
5. The Member of the Legislative Council shall not relinquish his immunity without a prior permission of the Council. Immunity shall not be dropped after ceasing to be a Member of the Council, within the limits which have been included during the membership period.

Article (54)

1. The Member of the Legislative Council shall not exploit his membership, in any other type of private business, or in any manner whatsoever.
2. Every Member of the Legislative Council shall present a financial statement for himself, his wife, his dependent “minor” children, detailing their wealth to include real estate, transferable property inside Palestine and abroad, and their debts. This declaration “Statement” shall be kept in a sealed and classified envelope at the Supreme Court of Justice, and shall not be disclosed unless approved by the Court, and within the limits it allows.

Article (55)

The Member of the Legislative Council shall receive a monthly salary determined by law.

Article (56)

Each Member of the Council shall have the right to:

1. Submit to the Executive branch all necessary and legitimate requests, which will enable him exercise his parliamentary duties.
2. Propose laws. Rejected proposals shall not be resubmitted within the same term of the period of the year.
3. Address inquiries and interrogatories to the Government or to any Minister, or alike.
Interrogatories shall be discussed only seven days after submission, unless the addressee agrees to reply promptly or within a shorter notice. However, this period can be curtailed to three days in case of urgency as per the approval of the President of the National Authority.

Article (57)

1. Ten Members of the Council may submit a request after the interrogation, to withdraw confidence from the Government or from any Minister. However, voting on such request shall be at least three days after submission. A decision shall be issued by a majority vote of the Council’s Members.
2. The withdraw of confidence shall result in terminating the term of the party in whom confidence was lost.

Article (58)

The Council may form special committee, or entrust one of its committees to conduct information-gathering and fact-finding in any public matter, or in any public institution.

Article (59)

The Legislative Council shall approve the General Development Plan. The law shall determine the way to prepare and present the Plan to the Council.

Article (60)

The law shall regulate the specific provisions regarding the preparation, approval of the general budget, and spending of funds appropriated in it, as well as the attached budgets, developmental budgets, the budgets of public institutions and commissions, and the budget of every project in which the government's investment comprises at least 50% of its capital.

Article (61)

Taking into consideration the provisions of Article (90) of this Basic Law:

1. The Government shall present the budget proposal to the Legislative Council at least two months before the beginning of the fiscal year.
2. The Legislative Council shall convene a special session to discuss the annual budget proposal. It either ratifies it prior the start of the new fiscal year, or send it back to the government in a period not exceeding one month from the date of receipt. The returned budget shall include the Council's comments, in order to complete the necessary requirements and return it to the Council for approval.
3. Voting on the general budget, in the Council, shall be chapter by chapter.
4. Transfer of funds among the budget's chapters is not permitted, unless there is an agreement between the Legislative Council and the Executive branch in this concern.

Article (62)

The final accounts of the National Authority's budget shall be presented to the Legislative Council no later than one year from the end of the fiscal year. The Council shall vote on the final accounts chapter by chapter.

TITLE FIVE
THE EXECUTIVE AUTHORITY

Article (63)

The Council of Ministers (Government) is the highest executive and administrative tool, which shoulders the responsibility of implementing the program that has been approved by the Legislative branch. Except the executive jurisdictions of the President of the National Authority as specified in the Basic Law, the Executive and administrative powers, shall be the jurisdiction of the Council of Ministers.

Article (64)

1. The Cabinet shall comprise of a Prime Minister and a number of Ministers not to exceed Twenty-Four ministers.
2. The decision of appointment shall specify and determine the Ministry that each Minister shall be assigned to.

Formation of the Cabinet

Article (66)

1. Once entrusted by the President of the Palestinian National Authority, the Prime Minister shall form his government within three weeks from the date of entrustment. He shall have the right to have an extension of a maximum of two weeks only.
2. If the Prime Minister fails to form his government within the said deadline, or did not obtain the confidence of the Legislative Council, then the President of the National Authority, shall replace him within two weeks from the date of failure, or from the date of the confidence session. Provisions contained in the above clause (1) shall apply on the new prime minister.

Confidence in the Government

Article (67)

1. Once the Prime Minister selects the members of his government, he shall submit a request to the Legislative Council to hold a special session for vote of confidence. Vote of confidence shall take place after listening and discussing the written ministerial statement, which specifies the program and the policies of the government. However, the session shall be held no later than one week from the date of submission of such request.
2. The vote of confidence shall be collectively for the Prime of Minister and members of his government, unless the Legislative Council decides otherwise by absolute majority.
3. Confidence shall be granted to the government, if it obtains the absolute majority of the PLC Members.

After obtaining the confidence, and before assuming their offices, the Prime Minister and members of his government shall take the constitutional oath stipulated in Article (35) of this Basic Law, before the President of the National Authority.

Jurisdiction of the Prime Minister

Article (68)

The Prime Minister shall exercise the following:

1. Formation, modification of the Council of Ministers, remove or accept resignation of any member of it, or fill the vacant position.
2. Call the Council of Ministers for weekly meeting, when necessary, or upon a request from the President of the National Authority, as well as putting its agenda.
3. Presiding the sessions of the Council of Ministers
4. Manage whatever related to the affairs of the Council of Ministers.
5. Oversee the work of Ministers and public institutions, which belong to the government.
6. Issue necessary decisions within his jurisdiction in accordance with law
7. Signing regulations approved by the Council of Ministers.
8. The Prime Minister shall appoint one of his ministers as a deputy for him, in order to assume his duties in his absence.

JURISDICTIONS OF THE COUNCIL OF MINISTERS

Article (69)

The Council of Ministers shall have the following jurisdiction:

1. Devise the general policies within the limits of its jurisdiction, and in light of the Ministerial program approved by the Legislative Council.
2. Implement the general policies set forth by the concerned Palestinian authorities.
3. Prepare the general budget to be presented to the Legislative Council.
4. Prepare the administrative apparatus, develop its structures, and provide it with all necessary means, as well as supervising and following it up.
5. Follow up the implementation of laws, and ensure compliance with their provisions, as well as take necessary actions in this regard.
6. Supervise the performance of different Ministries and all other components of the administrative apparatus, for their duties and functions, and coordinating between them
7. The Responsibility to maintain public order and internal security
8. Discuss suggestions with various entities, which are related to above clause (6 and 7), and their policies with regard to implementation of their jurisdictions.
9. Establishment or cancellation of agencies, institutions, commissions, and similar administrative units, which belong to the executive apparatus of the government, provided that each shall be regulated by law. b. Appoint Heads of Institutions and agencies mentioned above in item (a), and supervise them in accordance with the provisions of law.
10. Specify the jurisdictions of all ministries, agencies and institutions, which report to the Executive branch, and others of similar status.
11. Any other Jurisdictions or responsibilities assigned to it, in accordance with the provisions of law.

Article (70)

The Council of Ministers shall have the right to propose laws to the Legislative Council, issue regulations, and take necessary actions to implement laws.

Article (71)

Every Minister shall exercise the following powers and functions within his Ministry:

1. Propose the general policy of his Ministry and supervising its implementation after approval.
2. Supervise the conduct of business in his Ministry, and issue necessary instructions thereof.
3. Implement the general budget within the funds appropriated for his Ministry.
4. Propose bills and legislation related to his Ministry and present them to the Council of Ministers.
5. The Minister may delegate some of his powers to the Deputy Minister, or other senior officers in his Ministry within law.

Article (72)

Every Minister shall submit detailed reports to the Council of Ministers on the activities, policies, plans and achievements of his Ministry in comparison with the objectives specified for his Ministry within the framework of the General Plan, and on his Ministry's proposals and recommendations concerning its future policies. These reports shall be submitted regularly every three months, so that the Council of Ministers remains well informed, and has sufficient information about the activities and policies of each Ministry.

(1) Meetings of the Council of Ministers

Article (73)

1. By Invitation from the Prime Minister, the Council of Ministers shall meet periodically every week, or when necessary. Persons other than ministers shall not attend these meetings, unless there is a prior invitation from the Prime Minister.
2. The meetings of the Council of Ministers shall be documented.

(2) Responsibilities of the Prime Minister and Ministers

Article (74)

1. The Prime Minister is responsible before the President of the National Authority about his actions and the actions of his government.
2. Ministers are responsible before the Prime Minister, each within his jurisdiction, and for the actions of his ministry.
3. The Prime Minister and members of his government are jointly and individually responsible before the Legislative Council.

Article (75)

1. The President of the National Authority shall have the right to refer the Prime Minister to investigation as a result of crimes committed by him during, or due to his performance of his duties, in accordance with the provision of law.
2. The Prime Minister shall have the right to refer any Minister to investigation based on any of the reasons mentioned in the above clause (1), in accordance with the provisions of law.

Article (76)

1. Any accused Minister shall be suspended from performing his duties immediately upon the issuance of indictment. The termination of his service, shall not prevent the continuation of the investigation and follow-up procedures against him.
2. The Attorney General, or whoever represents him from the prosecutor's offices, shall assume the investigation and indictment procedures. A Minister's trial shall be conducted before the concerned court, and shall follow the provisions and rules prescribed in the Penal Code and in the Criminal Procedures Law.
3. The above provisions shall apply to Deputy Ministers, Assistant Ministers, and the like as well.

Vote of No Confidence

Article (77)

1. Ten Members of the Legislative Council may submit a request to the Speaker to hold a special session to withdraw confidence from the Government or from any Minister after investigating him.
2. The date of the first session shall be specified three days after the date of submitting the request. However, the session shall not be later than two weeks from that date

Article (78)

1. A vote of no confidence in the Prime Minister and his government shall require absolute majority of the PLC's Members.
2. A vote of no confidence in the Prime Minister and his government shall result in the termination of their term.
3. Upon the completion of the term of the Prime Minister and his government, they will temporarily exercise their work, as a winding up government, during which they will make decisions only to run the executive work, until a new government is formed

Article (79)

1. The President of the National Authority, shall in case the Legislative Council has a vote of NO confidence by absolute majority, on the Prime Minister, or on him and members of his government collectively, provide a replacement within a period not to exceed two weeks from the date of the vote of no confidence. The New Prime Minister shall be subject to the provisions of this Title.
2. In case the Legislative Council has a vote of no confidence on one or more members of the government, the Prime Minister shall provide a replacement in the next session, provided that it shall not exceed two weeks from the date of the no confidence session.
3. a. Any addition or change that affect a portfolio, a minister, or more shall be considered a shuffle, as long as it did not affect one-third of their number. b. Upon a cabinet shuffle, addition of a minister, or filling a vacancy, for any reason, the new ministers shall be presented for a vote of confidence in the very first session of the Legislative Council, within a period not to exceed two weeks from the date of the shuffle, or vacancy, in order to obtain confidence, in accordance with the provisions of this article.
4. The Prime Minister and any of the Ministers shall not assume the duties of their positions until they obtain the confidence of the Legislative Council

Financial Liability of Members of Council of Ministers

Article (80)

1. The Prime Minister and each Minister shall submit a financial report for himself, his wife, and dependent "minor" children, detailing what they own in real estate, transferable property, stocks, bonds, cash money, and debts, whether inside Palestine or abroad, to the President of the National Authority, who shall make the necessary arrangements to keep its secrecy. Such information shall be kept in a confidential manner, and will be disclosed only by a permit issued by the Supreme Court when necessary.
2. The Prime Minister, and each Minister shall not purchase or lease any thing from government property, or from any legal or juridical personality, or to have a financial interest in any contract concluded with governmental or administrative entities, nor may they, during their terms in office, be Board Members in any company, or practice commerce or any other profession, or receive a salary or any other financial rewards or remuneration from any person in any capacity, other than the one salary determined for the Minister and its allowances.

Remuneration and Allowances of Prime Minister and Ministers

Article (81)

Remunerations and allowances of the Prime Minister, Ministers, and the like, shall be determined by law.

Article (82)

The appointed Prime Minister or Minister shall be a Palestinian who enjoys full civil and political rights

Article (83)

The Government shall be considered resigned and shall be re-formed in accordance with the provisions of this Title in the following cases:

1. Upon the commencement of a new term of the Legislative Council
2. After vote of no confidence against the Prime Minister, the Prime Minister and his government, or at least one-third of the number of Ministers.
3. Any addition, change, vacancy, or removal that involves at least one-third of the Council of Ministers.
4. Death of the Prime Minister
5. Resignation of the Prime Minister, or resignation of at least one-third of the government members
6. Removal of the Prime Minister by the President of the National Authority.

(3) Security Forces and Police

Article (84)

1. Security Forces and the Police are a regular force. It is the armed force in the country, its function is to defend the country, serve people, protect the community and maintain public order, security and morals. It shall perform its duties within the limits prescribed by law, with complete respect to rights and freedoms.
2. Security Forces and the Police shall be regulated by law.

(4) Local Administration

Article (85)

The country shall be organized, by law, into local administrative units enjoying juridical personality. Each unit shall have a council elected directly as prescribed by law. The law shall specify the jurisdiction of the administrative units, their financial resources, their relations with central authority, and their role in the preparation and implementation of development plans. Further, the law shall specify the aspects of oversight over these units, and their various activities. Demographic, geographical, economical, and political parameters shall be taken into consideration at the time of dividing the country administratively, to provide for the integrity and unity of soil of the country, and interests of communities in it.

(5) Public Administration

Article (86)

Appointment of all public officials and government staff, and conditions of their employment shall be in accordance with law.

Article (87)

All affairs related to civil service shall be regulated by law. The Civil Service Bureau shall in coordination with concerned governmental entities, upgrade and improve public administration. Further, the opinion of Civil Service Bureau shall be taken into consideration upon drafting legislation, laws, and regulations which deal with public administration and its staff.

(6) *General Finance*

Article (88)

Public taxes and duties shall not be imposed, amended, and repealed except through law. No one shall be totally or partially exempted from paying these taxes, except in circumstances prescribed by law.

Article (89)

The law shall state the provisions concerning the collection of public funds and the procedures for spending therefrom.

Article (90)

The beginning and the end of the fiscal year, and the general budget shall be regulated by law. If the general budget was not approved by the beginning of the new fiscal year, expenditure shall continue on the basis of monthly allocation of 1/12 of the fiscal year's budget.

Article (91)

1. All revenues received, including taxes, duties, loans, grants, and profits accrued to the Palestinian National Authority from managing its property or activities, shall be paid to the Public Treasury. No part of the Public Treasury funds shall be allocated or spent for any purpose whatsoever except in accordance with the law.
2. In accordance with the provisions of law, the Palestinian National Authority may form a strategic financial reserve to encounter fluctuations and emergency situations.

Article (92)

Public loans shall be enacted by law. It is not allowed to engage in a project that requires spending funds from the Public Treasury during the next period, unless approved by the Legislative Council.

Article (93)

1. The law shall regulate the special rules related to the monetary authority, banks, financial papers (securities) market, foreign exchange and insurance companies, and all financial and credit institutions.
2. The Governor of the Monetary Authority shall be appointed per a resolution issued by the President of the National Authority, and endorsed by the Palestinian Legislative Council.

Article (94)

The law shall specify the rules and special procedures for granting privilege or obligations related to the utilization of natural resources and public facilities. The law shall also explain the

ways of dealing with state-owned real estate and other public and legal characters, or the rules and procedures organizing them.

Article (95)

The law shall specify the rules for granting wages, salaries, compensations, subsidies, and rewards incurring on the state's treasury. The law shall also regulate the entities responsible for their implementation. Further, no exceptional funds shall be spent unless within the limits specified legally.

Article (96)

1. A Financial and Administrative Auditing Bureau shall be established by law, to provide financial and administrative oversight on all entities of the Authority, to include monitoring the collection of public revenues, and spending therefrom within the limits of the general budget.
2. The Bureau shall submit to the President of the National Authority, and to the Legislative Council an annual report - or upon request - about its works and observations.
3. The Chief of the Financial and Administrative Bureau shall be appointed through a decision issued by the President of the National Authority, and endorsed by the Legislative Council.

TITLE SIX
THE JUDICIARY BRANCH

Article (97)

The Judiciary branch shall be independent, and shall be assumed by the different types and level of courts. The structure, jurisdiction, and rulings of the courts shall be in accordance with law. The rulings shall be announced and executed in the name of the Palestinian Arab People.

Article (98)

Judges shall be independent, and shall not be subject to any authority other than the authority of law while exercising their duties. No other authority may interfere in the judiciary or in the justice affairs.

Article (99)

1. Appointment, transfer, secondment, delegation, promotion, and questioning of judges shall be as prescribed in the Judiciary Law.
2. Judges can not be dismissed and their services can not be terminated unless as stipulated in the Judiciary Law.

Article (100)

A Supreme Judicial Council shall be created. The law shall specify the method of its formation, jurisdiction, and operating rules. The Council shall be consulted about draft laws which regulate any affairs of the Judiciary branch, to include Public Prosecution.

Article (101)

1. Sharia' affairs and personal status shall be assumed by Sharia' and religious courts in accordance with law.
2. Military Courts shall be established by special laws. Such courts shall not have any jurisdiction beyond military affairs.

Article (102)

Administrative Courts may be established by a law to look through administrative disputes and disciplinary claims. The other jurisdictions of such court, and procedures followed before it shall be specified by law.

Article (103)

1. A High Constitutional Court shall be established by law to ensure:
 - i. The constitutionality of laws, regulations, rules, and others.
 - ii. Interpretation of the Basic Law and legislations
 - iii. Settle jurisdiction disputes which arise between judicial entities and
 - iv. administrative entities that have judicial jurisdiction.
2. The law shall specify the way the High Constitutional Court is structured and formed, operating procedures to be followed, and the impact resultant from its rulings.

Article (104)

The Supreme Court shall temporarily assume all duties assigned to the administrative court and to the High Constitutional Court, unless they are within the jurisdiction of other judicial entities in accordance with applicable laws

Article (105)

Courts hearings shall be public unless a court decides to make them secret due to considerations related to public order or public morals. In all cases, ruling “sentence” shall be pronounced in a public hearing.

Article (106)

Judicial rulings shall be implemented. Abstention or suspension of implementation in any manner shall be considered a crime that qualifies for imprisonment, or dismissal from position, if the accused individual is a public official or servant. The Plaintiff may file his case directly at the concerned court, and the National Authority shall guarantee a full compensation for him.

Public Prosecution

Article (107)

1. The Attorney General shall be appointed through a decision issued by the President of the National Authority, based on a recommendation submitted by the Supreme Judicial Council, and endorsement of the Legislative Council.
2. The Attorney General shall handle and assume public cases in the name of the Palestinian Arab People. The jurisdiction, functions and duties of the Attorney General shall be specified by law.

Article (108)

1. The jurisdiction, functions, structure, and composition of the Public Prosecution shall be regulated by law.
2. The appointment, transfer, removal, and questioning conditions of members of Public Prosecution, shall be specified by law.

Article (109)

Execution sentence issued by any court shall not be implemented unless endorsed by the President of the Palestinian National Authority.

TITLE SEVEN
PROVISIONS OF THE STATE OF EMERGENCY

Article (110)

1. The President of the National Authority may declare a state of emergency by a decree when there is a threat to national security caused by war, invasion, armed insurrection, or at a time of natural disaster for a period not to exceed thirty (30) days.
2. The emergency state may be extended for another period of thirty (30) days after the approval of two thirds of the Legislative Council Members.
3. The decree declaring a state of emergency shall state its purpose, the territory to which it applies, and its duration.
4. The Legislative Council shall have the right to review all or some of the procedures which have been implemented during the emergency state at the first session to be convened after the announcement of the state of emergency, or in the extension session whichever comes earlier, and to conduct the necessary questioning in this regard.

Article (111)

It is not allowed, when declaring a state of emergency, to impose restrictions on the basic rights and freedoms, except to the level that is necessary to achieve the objective stated in the decree that announces the state of emergency

Article (112)

Any arrest resultant from the declaration of emergency situation shall be subject to the following minimum requirements:

1. Any detention done in accordance with the decree of the emergency situation, shall be reviewed by the Attorney General, or by the concerned court during a period not exceeding fifteen (15) days from the date of detention.
2. The detained “arrested” individual shall have the right to appoint a lawyer of his choice.

Article (113)

The Palestinian Legislative Council shall not be dissolved or suspended during the emergency situation, nor shall the provisions of this chapter be suspended.

Article (114)

All provisions which regulate emergency states implemented in Palestine prior the implementation of this Basic Law shall be canceled, to include the mandate civil defense (Emergency) regulations issued in 1945.

TITLE EIGHT
GENERAL & TRANSITIONAL PROVISIONS

Article (115)

The provisions of this Basic Law shall apply during the interim period, and can be extended until the implementation of the new constitution of the Palestinian State.

Article (116)

Laws shall be promulgated in the name of the Palestinian Arab People, and shall be published immediately in the Official Gazette . These laws shall come into force 30 days from the date of their publication unless the laws state otherwise.

Article (117)

The provisions of laws shall apply only to matters occurring as from the date on which they came into force. However, it can be stated otherwise in articles that are not punitive.

Article (118)

Law, regulations and decisions in force in Palestine before the implementation of this law, shall remain in force to the extent that they do not conflict with the provisions of this Basic Law, until they are amended or repealed in accordance with law.

Article (119)

Everything in contradiction with the provisions of this Amended Basic Law shall be repealed.

Article (120)

The provisions of this Basic Law shall not be amended except with two thirds majority of the Members of the Legislative Council.

Article (121)

This Amended Basic Law shall be effective as of publishing it in the Official Gazette.

Issued in Ramallah City on March 18,2003

Corresponding to Muharam 15,1424 h.

Yassir Arafat

Chairman of the Executive Committee Of the Palestinian Liberation Organization

President of The Palestinian National Authority

- E. Universal Islamic Declaration of Human Rights, art. XII-XIII, Sep. 19, 1981, available at <http://www.alhewar.com/ISLAMDEC.html>.

XII Right to Freedom of Belief, Thought and Speech

- a) Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the Law. No one, however, is entitled to disseminate falsehood or to circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons.
- b) Pursuit of knowledge and search after truth is not only a right but a duty of every Muslim.
- c) It is the right and duty of every Muslim to protest and strive (within the limits set out by the Law) against oppression even if it involves challenging the highest authority in the state.
- d) There shall be no bar on the dissemination of information provided it does not endanger the security of the society or the state and is confined within the limits imposed by the Law.
- e) No one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them; respect for the religious feelings of others is obligatory on all Muslims.

XIII Right to Freedom of Religion

Every person has the right to freedom of conscience and worship in accordance with his religious beliefs.

- F. Protection of Holy Places Law, 5727-1967, 21 L.S.I. 76 (1966-67) (Isr.), English translation, *available at* <http://www.knesset.gov.il/laws/special/eng/HolyPlaces.htm>.

Protection of Holy Places Law 5727 (1967)*

1. The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings with regard to those places.
2.
 - a. Whosoever desecrates or otherwise violates a Holy Place shall be liable to imprisonment for a term of seven years.
 - b. Whosoever does anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings with regard to those places shall be liable to imprisonment for a term of five years.
3. This Law shall add to, and not derogate from, any other law.
4. The Minister of Religious Affairs is charged with the implementation of this Law, and he may, after consultation with, or upon the proposal of, representatives of the religions concerned and with the consent of the Minister of Justice make regulations as to any matter relating to such implementation.
5. This Law shall come into force on the date of its adoption by the Knesset.

LEVI ESHKOL
Prime Minister

ZERACH WARHAFTIG
Minister of
Religious Affairs

SHNEUR ZALMAN SHAZAR
President

* Adopted by the Knesset on 27 June 1967.

II. U.S. Department of State Reports

- A. Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *International Religious Freedom Report 2007: Israel and the Occupied Territories*, available at <http://www.state.gov/g/drl/rls/irf/2007/90212.htm>.

Israel and the Occupied Territories

International Religious Freedom Report 2007
Released by the Bureau of Democracy, Human Rights, and Labor

The country has no constitution; however, the Basic Law on Human Dignity and Liberty provides for freedom of worship, and the Government generally respects this right in practice.

There was no change in the status of respect for religious freedom during the reporting period, and government policy continued to contribute to the generally free practice of religion. Relations among religious and ethnic groups--between Jews and non-Jews, Muslims and Christians, Arabs and non-Arabs, secular and religious Jews, and among the different streams of Judaism--often were strained. Problems continued to exist, stemming primarily from the continuing Israeli-Palestinian conflict and the Government's unequal treatment of non-Orthodox Jewish religious groups, including the Government's recognition of only Orthodox Jewish religious authorities in personal and some civil status matters concerning Jews.

Tensions between Israeli Jews and Israeli Arabs increased significantly after the start of the second Palestinian Intifada (or uprising) in 2000. Tensions increased further following the July 12 to August 14, 2006, conflict in Southern Lebanon, during which some Israeli-Arab community leaders expressed public sympathy for Hizballah, and some Jewish political leaders characterized Israeli Arabs as enemies of the state. Tensions remained high due to institutional, legal, and societal discrimination against the country's non-Jewish citizens.

The U.S. Government discusses religious freedom problems with the Government as part of its overall policy to promote human rights.

Section I. Religious Demography

Based on its pre-1967 borders, the country has an area of 7,685 square miles, and its population is 7.15 million, of which 5.4 million are Jewish, 1.4 million are Arabs, and 310,000 are classified as "other"--mostly persons from the former Soviet Union who immigrated under the Law of Return but who did not qualify as Jews according to the Orthodox Jewish definition or the definition used by the Government for civil procedures. According to a government survey conducted in 2004 and published in 2005, approximately 8 percent of the Jewish population are Haredim, or ultra-Orthodox, and another 9 percent are Orthodox, while 39 percent describe themselves as "traditionally observant" or "traditional," and 44 percent describe themselves as

"secular" Jews, most of whom observed some Jewish traditions. A growing but still small number of traditional and secular Jews associate themselves with the Conservative, Reform, and

Reconstructionist streams of Judaism, which are not officially recognized for purposes of civil and personal status matters involving their adherents. Although the Government does not officially recognize them, these streams of Judaism received a small amount of government funding and were recognized by the country's courts.

Slightly more than 20 percent of the population is non-Jewish, the vast majority of whom are ethnically Arab. Of this number, Muslims constitute 16 percent, Christians 2.1 percent; Druze 1.5 percent; and members of other religious groups 0.5 percent, including relatively small communities of evangelical Christians, Messianic Jews (those who consider themselves Jewish but believe that Jesus Christ is the Messiah), and Jehovah's Witnesses.

The Government reported that during 2006 it issued 86,000 permits for foreigners to work in the country. The Government estimated that another 70,000 to 80,000 illegal foreign workers reside in the country. Most of the foreign workers are Roman Catholic, Orthodox Christian, Buddhist, or Hindu.

The Basic Law on Human Dignity and Liberty describes the country as a "Jewish" and "democratic" state. Most members of the non-Jewish minority were generally free to practice their religions but were subject to various forms of discrimination, some of which have religious dimensions.

Section II. Status of Religious Freedom

Legal/Policy Framework

There is no constitution; however, the Basic Law on Human Dignity and Liberty provides for freedom of worship, and the Government generally respected this right in practice. Israel's Declaration of Independence describes the country as a "Jewish state," and promises full social and political equality, regardless of religious affiliation. While the law explicitly guarantees freedom of religion and the safeguarding of "holy places of all religions," inequities exist. Israeli Arabs and other non-Jews generally were free to practice their religions; however,

discrepancies in treatment existed. Discrepancies between Jews and various non-Jewish communities and between Orthodox Jews and Jews of non-Orthodox affiliations were also prevalent during the reporting period.

The 1967 Protection of Holy Sites Law applies to holy sites of all religious groups within the country and in all of Jerusalem. The Penal Law makes it a criminal offense to damage any holy site. However, the Government only issued implementing regulations for Jewish sites.

The "status quo" agreement reached at the founding of the state, which has been upheld throughout the state's history, provides that the Government will implement certain policies based on Orthodox Jewish interpretations of religious law. For example, the Government does not allow civil marriage and does not recognize Jewish marriages performed in the country

unless they are performed by the Orthodox Jewish establishment. Exclusive control over marriages resides by law with recognized bodies of the recognized religious denominations. The Orthodox Jewish establishment also determines who is buried in Jewish state cemeteries, limiting this right to individuals considered "Jewish" by the Orthodox standards. In addition, the national airline El Al and public buses in every city but Haifa do not operate on Saturday, the Jewish Sabbath; however, several private bus companies do. Additionally, streets in most Orthodox Jewish neighborhoods are closed to vehicles on the Sabbath. According to the Law on Work and Rest Hours of 1951, which was upheld by the Supreme Court in April 2005, Jews in most professions are prohibited from working on the Sabbath unless they are granted a special permit by the Ministry of Trade, Industry, and Employment. However, according to the Israel Religious Action Center (IRAC), the Government often chooses not to enforce the law.

The law considers "religious communities" those recognized by, and carried over from, the British Mandate period (1920-1948), during which Great Britain administered present-day Israel and the Occupied Territories. These include: Eastern Orthodox, Latin (Roman Catholic), Gregorian-Armenian, Armenian-Catholic, Syrian (Catholic), Chaldean (Chaldean Uniate Catholic), Greek Catholic Melkite, Maronite, Syrian Orthodox, and Jewish. Since the founding of the country, the Government has recognized three additional religious communities--the Druze (an offshoot of Islam) in 1957, the Evangelical Episcopal Church in 1970, and the Baha'i in 1971. The fact that the Muslim population was not defined as a religious community was a vestige of the Ottoman period when Islam was the dominant religion, and it does not limit Muslims from practicing their faith. A collection of ad hoc arrangements with various government agencies has defined the status of several Christian denominations with representation in the country. The Government allows members of unrecognized religious groups the freedom to practice their religion. According to the Government, there were no religious groups awaiting recognition during the reporting period.

With some exceptions, each recognized religious community has legal authority over its members in matters of marriage, divorce, and burial. Legislation enacted in 1961 afforded the Muslim courts exclusive jurisdiction to rule in matters of personal status concerning Muslims. For so-called "unrecognized religions," no local religious tribunals exercised jurisdiction over their members in matters of personal status. Only recognized religious communities receive government funding for their religious services. In recent years, the Arrangements Law, drafted annually to guide government spending, has provided exemption from municipal taxes for any place of worship of a recognized faith. Exemption from tax payments is also granted to churches that have not been officially recognized by law. In several cases, the Government has interpreted that exemption from municipal taxes to apply only to that portion of the property of religious organizations that was actually used for religious worship. Not-for-profit religious organizations also sometimes receive tax exemptions. For example, the Lutheran World Federation (LWF) had tax-exempt status for its hospital on the Mount of Olives for almost 40 years until the District Court revoked this privilege in 2002. The LWF appealed to the Supreme Court and commenced negotiations with the Government to resolve the issue. At the end of the reporting period, the case was still pending before the Supreme Court as negotiations continued.

Secular courts have primacy over questions of inheritance, but parties, by mutual agreement, may bring such cases to religious courts. Jewish, Druze, and Christian families may ask for some

family status matters, such as alimony and child custody in divorces, to be adjudicated in civil courts as an alternative to religious courts. Muslims have the right to bring matters such as alimony and property division associated with divorce cases to civil courts in family-status matters. However, paternity cases remain under the exclusive jurisdiction of Shari'a courts. There is no overarching law or directive that prescribes these varying approaches.

In 2003 the Government introduced a core curriculum program that required all state-funded schools to teach core subjects, such as mathematics. However, state-subsidized ultra-Orthodox Jewish religious schools were not compelled to comply with this law. The High Court ruled in December 2004 that ultra-Orthodox Jewish religious schools that did not comply with the Education Ministry's core curriculum by the opening of the 2007 school year would not be eligible for any funding from the ministry. The ruling was a response to a petition filed by the Secondary Schools Teachers' Association against the Ministry of Education charging that while the ministry cut funding to the public school system, causing hundreds of teachers to lose their jobs, it provided approximately \$40 million (170 million New Israeli Shekels - NIS) to autonomous ultra-Orthodox schools that did not comply with ministry pedagogical requirements. In April 2006 the Education Ministry reported that all of the "recognized but unofficial" education facilities affiliated with ultra-Orthodox parties were now "fully implementing the core curriculum program."

The Supreme Court ruled in April 2006 that rabbinic courts may not arbitrate property disputes between a divorced husband and wife. This ruling has, in effect, repudiated the authority of the rabbinic courts to serve as arbitrators in all financial disputes, even if neither party in the dispute objects to the rabbinic courts playing this role. Although the rabbinic courts have ruled on financial matters since before the establishment of the state, their jurisdiction on these matters has never been established in law. In response to the Supreme Court ruling, the rabbinic courts initiated a Knesset bill to secure in law their jurisdiction over financial matters, which they presented in June 2006 to the Justice Ministry for its consideration.

The Ministry of the Interior has jurisdiction over religious matters concerning non-Jewish groups; the Ministry of Tourism is responsible for the protection and upkeep of all holy sites; and the National Religious Services Authority, within the Prime Minister's office, has jurisdiction over the nation's 134 religious councils (one Druze and the rest Jewish) that oversee the provision of religious services to their respective communities. Legislation establishing religious councils does not include non-Jewish religious communities other than the Druze. Instead, the Ministry of the Interior directly funds religious services for recognized non-Jewish communities. The state, through the Prime Minister's office, continues to finance approximately 40 percent of the religious councils' budgets, and local authorities fund the remainder. The Government's 2006 budget for Religious Councils was \$32.9 million (140 million NIS).

According to Government figures, the 2006 budget for religious services and religious structures for the Jewish population was approximately \$329 million (1.4 billion NIS). Religious minorities received approximately \$26 million (112 million NIS), or just over 7 percent of total funding.

Under the Law of Return, the Government grants immigration and residence rights to individuals who meet established criteria defining Jewish identity. Included in this definition is a child or

grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew, and the spouse of a grandchild of a Jew. The Government uses a separate, more rigorous standard based on Orthodox Jewish criteria to determine the right to full citizenship, entitlement to government financial support for immigrants, the legitimacy of conversions to Judaism performed within the country, and Jewish status for purposes of personal and some civil status problems. Residency rights are not granted to relatives of converts to Judaism, except for children of female converts who are born after the mother's conversion is complete. The Law of Return generally does not apply to non-Jews or to persons of Jewish descent who have converted to another faith. Approximately 36 percent of the country's Jewish population was born outside of the country.

The Government does not require that identification cards carry a nationality (i.e., usually religious) designation. However, citizens and residents are still required to register with the Ministry of the Interior's Population Registry as one of a set list of nationalities.

Politicians, media outlets, and many private citizens criticized the Government's practice of granting military draft exemptions and living allowances to full-time yeshiva (Jewish religious school) students. Under the so-called Tal Law, passed in 2002 and renewed in 2007, ultra-Orthodox Jews are entitled to exemption from military service to pursue religious studies. This exemption allows ultra-Orthodox Jews to postpone military service in one-year increments to pursue fulltime religious studies at recognized yeshivas. These students must renew their deferments each year by proving that they are full-time students. At the age of 22, the yeshiva students receive a 1 year hiatus from their deferment obligations, during which they have the option of performing community service, learning a trade, or serving in the army for an abbreviated enlistment period. Students who choose none of these are subject to the military draft at the conclusion of the grace year, unless they continue their yeshiva studies full time with yearly renewals until they reach the age of 40. According to the government watchdog group Movement for Quality, since 2002 only 1,520 ultra-Orthodox men have chosen to enter the workforce through programs mandated by the Tal Law, while 50,000 have continued to study in yeshivas. According to Israeli Defense Force (IDF) figures released in July 2007, approximately 11 percent of all male candidates for military service have deferments as full-time yeshiva students, up from 7.3 percent in 2000.

Public Hebrew-speaking secular schools teach Jewish history and Jewish religious texts. These classes primarily cover Jewish heritage and culture, rather than religious belief. Public schools with predominantly Arab student bodies teach mandatory classes on the Qur'an and the Bible, since both Muslim and Christian Arabs attend these schools. Orthodox Jewish religious schools that are part of the public school system teach mandatory religion classes, as do private ultra-Orthodox schools that receive some state funding.

The Government recognizes the following Jewish holy days as national holidays: Rosh Hashanah, Yom Kippur, Sukkot, Simhat Torah, Passover, and Shavuot. Arab municipalities often recognize Christian and Muslim holidays.

Restrictions on Religious Freedom

Government policy and practice contributed to the generally free practice of religion; however, problems continued. Muslim, Christian, and Orthodox Jewish religious authorities have exclusive control over personal status matters, including marriage, divorce, and burial, within their respective communities. Many Jewish citizens objected to such exclusive control by the Orthodox establishment over Jewish marriages and other personal status matters, and to the absence of provision for civil marriage. Approximately 306,000 immigrants from the former Soviet Union were ineligible to marry in Israel because they were not recognized as Jewish by Orthodox authorities.

Anyone wishing to marry in a secular ceremony, Jews wishing to marry in non-Orthodox religious ceremonies, Jews not officially recognized as Jewish by the Orthodox Jewish establishment but wishing to marry in Jewish ceremonies, and Jews wishing to marry someone of another faith must all do so abroad. The Ministry of the Interior recognizes such marriages when performed abroad. During the reporting period, approximately 300,000 citizens were not eligible to marry in Israel because they lacked religious affiliation. According to the Central Bureau of Statistics, between 2000 and 2004, 32,009 citizens married outside of the country. Almost half of this number--14,214--comprised couples in which both the husband and the wife were Jewish. A smaller proportion of this number--1,764--lacked religious affiliation in the country. Between 2000 and 2003, 5 percent of Jewish couples that qualified to be married by the Chief Rabbinate decided to marry abroad instead. Others decided instead to hold weddings unrecognized by the Government, including Reform and Conservative weddings and those conducted by Kibbutz authorities.

In November 2004 the Arab-Israeli advocacy group Adalah petitioned the Supreme Court to compel the Government to protect Muslim sites. Adalah charged that all of the locations designated as holy sites were Jewish, and the Government's failure to implement regulations had resulted in desecration and conversion of individual Muslim sites. Responding to a 2004 Supreme Court order to respond within 60 days, the Government stated in January 2006 that it had appointed an interministerial committee to examine the administrative and budgetary management of holy sites. The Supreme Court, which repeatedly rescheduled the initial hearing since 2004, had still not heard the case by the end of the reporting period. At the end of the reporting period there were 136 designated holy sites in the country, all of which were Jewish.

In 2004 the Arab Association for Human Rights (AAHR) issued a comprehensive report documenting what it referred to as the "destruction and abuse of Muslim and Christian holy places in Israel." In its report, AAHR asserted that 250 non-Jewish places of worship had either been destroyed during and after the 1948 war or made inaccessible to the local Arab population. For example, lands of destroyed Arab villages were given to Jewish farmers, and the surviving mosques in these villages had been used as animal pens or storage depots. In Ein Hod, a town south of Haifa, the mosque was turned into a bar.

During Jewish holidays and following terrorist attacks, the Government imposed closures to restrict travel in the country and the Occupied Territories for security purposes that had the effect of impeding access to holy sites in the country for Arab Muslims and Christians, as well as Israeli-Arabs and Palestinians who possessed Jerusalem identification cards. The construction of

the separation barrier also impeded access to holy sites throughout the country and the Occupied Territories during the reporting period.

The Government permits religious organizations to apply for state funding to maintain or build religious facilities. Funding was provided for the maintenance of facilities such as churches, Orthodox synagogues, mosques, and cemeteries. Funding for construction was not provided for non-Orthodox synagogues. Several civil rights nongovernmental organizations (NGOs) asserted that Orthodox Jewish facilities receive significantly greater proportions of funding than did non-Orthodox Jewish and non-Jewish facilities. Muslim groups complained that the Government did not equitably fund the construction and maintenance of mosques in comparison to the funding of synagogues.

In March 2005 a dispute over the sale of property in Jerusalem's Old City owned by the Greek Orthodox Church to investors led a Holy Synod meeting in Istanbul to depose the Greek Patriarch of Jerusalem, Irineos I, in May 2005. Irineos I claimed that proceedings against him were illegal and refused to resign. While Greece, Jordan, and the Palestinian Authority recognized the ousting of Irineos and the appointment of Theophilus III as his successor, the Government of Israel did not. In November 2005 Theophilus appealed this issue to the Israeli High Court, and at the same time a ministerial committee was established to deal with the situation. At the end of the reporting period, the committee had not resolved the issue, and the Government of Israel continued to recognize the deposed Patriarch. The High Court was scheduled to hear the case in November 2007.

In 2006 AAHR reported that the Government was reluctant to refurbish mosques in areas where there was no longer a Muslim population and has never in its history budgeted for the building of a new mosque. Muslim clerics, judges, and political leaders cited a lack of government funding for maintenance of and access to mosques in Tiberias, Safed, Beersheva, Caesaria and other places. The Government allowed private citizens or municipalities to turn several into galleries, restaurants, and museums. The Government stated that the AAHR report referred to abandoned sites and not to active sites, and the abandoned sites were not properly maintained. There is no restriction on the construction of new mosques, but the Government noted that while the state budget does not cover the costs of new construction, it does provide assistance in the maintenance of mosques. The Government reported that the budget for developing and maintaining the holy sites of each non-Jewish religious community in 2006 was \$1.38 million (NIS 5.81 million). The Government's total development budget for cemeteries of all religious groups was approximately \$7.06 million (NIS 30 million) in 2005.

Muslim residents of the Be'er Sheva area, including members of Bedouin tribes, protested the municipality's intention to reopen the city's old mosque as a museum rather than as a mosque for the area's Muslim residents. The High Court rejected a petition from Adalah, representing the area's Muslim community, to enjoin the municipality from renovating the mosque into a museum. The petitioners argued that there were no alternative mosques in the Be'er Sheva area. In July 2006 the High Court proposed a compromise whereby the mosque would be used as a museum of Islamic culture. On January 21, 2007, Adalah rejected the court proposal, arguing that there was a need to uphold the religious rights of area Muslims. Adalah's response to the court observed that while there was one synagogue for every 700 Jews in Be'er Sheva, there was

not a single mosque for the city's 5000 Muslims. The case was pending at the end of the reporting period.

Building codes for places of worship are enforced selectively based on religion. Several Bedouin living in unrecognized villages were denied building permits for construction of mosques, and in the past the Government has destroyed mosques built in unrecognized Bedouin communities. Adalah reported that, in 2005 the state requested a demolition order for a mosque in Husseiniya. The case was still pending at the end of the reporting period. According to the Regional Council for the Arab Unrecognized Villages in the Negev, the Government did not destroy any mosques during the reporting period.

Missionaries were allowed to proselytize, although offering or receiving material inducements for conversion or converting persons under 18-years-old remained illegal unless one parent was of the religion to which the minor wished to convert. The Church of Jesus Christ of Latter-day Saints (Mormons) voluntarily refrained from proselytizing under a longstanding agreement with the Government.

By the end of the reporting period, the Knesset had not ratified the Fundamental Agreement that was negotiated in the 1990s establishing relations between the Holy See and the Government. In a separate process, representatives of the Government and the Holy See continued to hold intermittent negotiating sessions, begun in 2004, with the aim of reaching an agreement (concordat) on fiscal and legal matters such as tax exemption of Roman Catholic institutions and property and the access of the Roman Catholic Church to Israeli courts. No agreement had been reached by the end of the reporting period.

Since the Government does not have diplomatic relations with Saudi Arabia, Muslim citizens must travel through another country, usually Jordan, to obtain travel documents for the Hajj. The average annual number of Hajj pilgrims traveling from the country in recent years was approximately 4,500, and the overall number allowed to participate in the Hajj was determined by Saudi Arabian authorities. According to the Government, travel to hostile countries, including travel to Saudi Arabia for the Hajj, may be restricted; however, these restrictions are based on security concerns rather than on any religious or ethnic factors.

During the reporting period, many groups and individuals of numerous religious groups traveled to the country freely. However, according to representatives of Christian institutions, visa issuance rates for some of their religious workers significantly declined from rates in previous years. Religious workers based in Jerusalem or the Occupied Territories were denied entry or re-entry under a general tightening of government criteria for foreign nationals. In January 2007 the Government published new visa criteria intended to loosen the restrictions on travelers with legitimate business, including religious workers, in the Occupied Territories. At the end of the reporting period, it was still too early to tell whether the new visa criteria would alleviate the problem.

The Government discriminated against non-Jewish citizens and residents, the vast majority of whom were Arab Muslims and Christians, in the areas of employment, education, and housing. The Orr Legal Commission of Inquiry, established to investigate the 2000 police killing of 12

Israeli-Arab demonstrators, issued a final report in 2003 noting historical, societal, and governmental discrimination against Arab citizens. The Government has not implemented either the Orr Commission recommendations or those of a follow-up interministerial committee.

According to a March 2005 media report, approximately 8,000 non-Jewish soldiers were serving in the IDF. The IDF policy is to allow non-Jewish soldiers to go on home leave for their respective religious holidays. Military duties permitting, Jewish soldiers can leave on holidays. These duties rotate to allow some soldiers to go home for Jewish holidays. The IDF conducts commemorative activities appropriate for each respective Jewish holiday.

The IDF did not have any Muslim or Christian chaplains because, according to government sources, the frequent home leave accorded all soldiers allowed Muslim and Christian soldiers easy and regular access to their respective clergy and religious services at home. There were discussions between the IDF and the Israeli National Security Council regarding chaplain appointments for non-Jewish IDF soldiers, but no decision had been made by the end of the reporting period.

The Government used private non-Jewish clergy as chaplains at military burials when a non-Muslim or non-Jewish soldier died in service. The Interior Ministry reported that it provided imams to conduct funerals according to Muslim customs. All Jewish chaplains in the IDF are Orthodox.

The IDF sponsored Orthodox Jewish conversion courses for Jewish soldiers who do not belong to Orthodox Judaism and for non-Jewish soldiers seeking to convert to Judaism. The IDF does not facilitate conversion to other religious groups.

Military service is only compulsory for Jews, Druze, and Circassians. Orthodox Jews could obtain exemptions from service for full-time religious study. Approximately 90 percent of Israeli Arabs chose not to serve in the army. Some Arab citizens, mainly Bedouin, were accepted as volunteers. Israeli-Arab advocacy groups charged that housing, educational, and other benefits, as well as employment preferences based on military experience, effectively discriminate in favor of the Jewish population, the majority of who serve in the military. In December 2004 the Ivri Committee on National Service recommended to the Government that Israeli-Arabs be afforded an opportunity to perform alternative nonmilitary service. On December 13, 2006, the Government announced procedures to offer a civilian service program to citizens not drafted for military service. Beginning in June 2007 Israeli Arabs and ultra-Orthodox Jews are expected to have the opportunity to serve for one to two years as volunteers in health, education, or welfare sectors. After completing service, volunteers would be eligible for the same national benefits accorded military veterans.

Government resources available for religious/heritage studies to Arab and to non-Orthodox Jewish public schools were proportionately less than those available to Orthodox Jewish public schools. According to IRAC, in 2006 approximately 96 percent of all state funds for Jewish religious education were allocated exclusively to Orthodox or ultra-Orthodox Jewish schools. Both public and private Arab schools offer studies in both Islam and Christianity, but the state

funding for such studies was proportionately less than the funding for religious education courses in Jewish Orthodox schools.

The Government funded secular schools and Orthodox and ultra-Orthodox Jewish schools; it did not fully fund religious schools for non-Jews. Schools that seek to adopt a non-Jewish, religious curriculum must operate outside of the regular public schools system. Quality private religious schools for Israeli Arabs existed; however, parents often must pay tuition for their children to attend such schools, since little government funding was available. Jewish private religious schools, however, received significant government funding in addition to philanthropic contributions from within the country and abroad, which effectively lowered the tuition costs.

Government funding to the different religious sectors was disproportionate to the sectors' sizes. Civil rights NGOs charged that the Government favored Orthodox and ultra-Orthodox Jewish institutions in the allocation of state resources for religious activities.

In spite of the legal provision for public funding to build non-Orthodox synagogues, the Government did not fund the construction of any non-Orthodox synagogues. In 2003 IRAC petitioned the High Court on behalf of a Reform congregation in Modi'in to require that Modi'in municipality fund construction of a Reform synagogue. The city had already funded eight Orthodox synagogues, but no Conservative or Reform synagogues. The High Court ruled in 2003 that it was permissible to use state funds for the construction of a Reform synagogue in the city of Modi'in and ordered the municipality to repeat the process for determining which congregations would receive funding using criteria that would guarantee equal treatment. Nevertheless, the request for funding stalled in the Modi'in municipality. IRAC again petitioned the High Court to compel the municipality to hold a hearing to consider all available budget requests for synagogue construction in light of the needs of Modi'in residents. IRAC also petitioned the court to freeze all municipal allocations for synagogue construction in Modi'in until such a hearing was held. In 2005 the Government announced that it would build synagogues for non-Orthodox denominations, but it had not allocated any such funding by the end of the reporting period.

The 1996 Alternative Burial Law established the right of any individual to be buried in a civil ceremony and required the establishment of 21 public civil cemeteries throughout the country. However, at the end of the reporting period, only 1 public civil cemetery existed in the country, in Be'er Sheva, and only approximately 15 Jewish cemeteries in the country contained a section for civil burials. Several domestic civil rights and immigrant groups asserted that the Government failed to allocate adequate space or sufficient funds for the establishment of civil cemeteries. Certain Kibbutzim also offered civil burials, but according to some NGOs such burials were expensive. During the reporting period, the city of Jerusalem began construction of a cemetery for use by secular citizens free of charge. When completed, this cemetery would be the first public civil cemetery endorsed by a municipal government in the country.

Approximately 93 percent of land in the country is public domain, the majority of which is owned by the state, with approximately 12.5 percent owned by the Jewish National Fund (JNF). All public lands and that owned by the JNF are administered by the governmental body, the Israel Lands Administration (ILA). JNF representatives occupy 50 percent of the seats in the

ILA's governing council. By law public land may only be leased, and the JNF's statutes prohibit land sale or lease to non-Jews. In January 2005 the Attorney General ruled the Government cannot discriminate against Israeli Arabs in marketing and allocation of lands it manages, including lands the ILA manages for the JNF. The Attorney General also decided that the Government should compensate the JNF with land equal in size to any plots of JNF land won by non-Jewish citizens in government tenders.

In March 2004 the Knesset rejected two bills that would have allowed for civil marriage. In July 2004 the chairman of a Knesset committee established to formulate a civil marriage option announced that the committee would not complete its work or issue recommendations due to what was characterized as political interference with the committee's work. In April 2005 the High Court instructed the Government to inform the court within three months of the Government's position on whether to recognize so-called "consular marriages," those conducted by officials of foreign embassies in the country; at the end of the reporting period, the Government continued to review its policy. Government recognition of consular marriages would enable couples with no religious affiliation, or those of a religion not recognized by the Government, to wed in such civil ceremonies. Consular weddings have not been performed since 1995, when the Foreign Ministry issued a memorandum to foreign embassies instructing them to cease performing consular marriages.

The state does not recognize conversions to Judaism performed in the country by non-Orthodox rabbis. In 2005 the High Court ruled that, for the purpose of conferring citizenship rights, the Government must recognize those non-Orthodox conversions of non-citizen legal residents that were begun in the country but formalized abroad by acknowledged Jewish religious authorities, even if not of the Orthodox strain. In a separate 2004 ruling, the court determined that non-Jews who move to the country and then convert in the country through an Orthodox conversion were eligible to become immigrants and citizens pursuant to the Law of Return. Previously, non-Jews were entitled to immigrate to the country and obtain full citizenship only if these conversions were conducted entirely abroad and under Orthodox standards. The High Court did not, however, rule on whether the Government must recognize non-Orthodox conversions formalized in the country.

In May 2006 the Chief Rabbinate announced that it had decided two years earlier not to recognize automatically conversions performed by Orthodox rabbis abroad, citing the need for consistency of standards in the conversion process. At the end of the reporting period, negotiations continued between the Chief Rabbinate and the Rabbinical Council of America over the identification of Orthodox tribunals abroad whose conversion rulings would be recognized by Israel's Chief Rabbinate.

Under the Jewish religious courts' interpretation of personal status law, a Jewish woman may not receive a final writ of divorce without her husband's consent. Consequently, thousands of women, so-called agunot--literally "chained women"--are unable to remarry or have legitimate children because their husbands have either disappeared or refused to grant divorces. Rabbinical tribunals have the authority to impose sanctions on husbands who refuse to divorce their wives or on wives who refuse to accept divorce from their husbands, but they cannot grant a divorce without the husband's consent. In 2004 a rabbinical court decided for the first time to jail a

woman who refused to accept a divorce from her husband. Rabbinical courts also could exercise jurisdiction over, and issue sanctions against, non-Israeli Jews present in the country. On November 3, 2006, the country's Chief Sephardi Rabbi ordered the cancellation without explanation of an international conference on the agunot scheduled for the following week in Jerusalem.

Some Islamic law courts have held that Muslim women could not request a divorce but could be forced to consent if a divorce was granted to the husband. One Arab Muslim woman who won a divorce from her abusive husband in a Muslim court subsequently filed a civil suit against the husband with the Magistrates Court in the north. The court set a precedent in 2005 by awarding the woman approximately \$10,000 (42,500 NIS) in compensation for damage to her status and chances of re-marrying. Divorced Arab women were stigmatized in their communities and experienced difficulties remarrying.

Members of unrecognized religious groups, particularly evangelical Christians, sometimes faced problems in obtaining marriage certifications or burial services that were similar to the problems faced by Jews who were not considered Jewish by the Orthodox establishment. Informal arrangements with other recognized religious groups provided relief in some cases.

Most Orthodox Jews believed that mixed gender prayer services violate the precepts of Judaism. As a result, such services were prohibited at the Western Wall, the holiest site in Judaism, and men and women must use separate areas to visit the Western Wall. Women also were not allowed to conduct any prayers at the Western Wall wearing prayer shawls, which were typically worn by men, and cannot read from Torah scrolls. In 2003 the Women of the Wall, a group of more than 100 Orthodox, Conservative, and Reform women, lost their 14 year legal battle to hold formal women's prayer services at the Western Wall. The High Court ruled that the group could not hold prayer services at the Western Wall and instead would be permitted to hold them at nearby Robinson's Arch, part of an archeological site. The court ordered the Government to prepare an area at Robinson's Arch where women could read aloud from the Torah and conduct group prayers, and the Government inaugurated a plaza in this area for women's services in August 2004.

Another religious group, the Masorti movement (which represents the Conservative stream in U.S. Judaism) regularly held prayer services at Robinson's Arch according to its own customs, which include men and women praying together, women reading from the Torah, and women wearing a tallit or tefillin. However, they could pray only between seven and eight in the morning without paying. If the members of the Masorti movement wanted to pray after this time, they had to pay the approximately \$6 fee (25 NIS) charged to visit the archeological site. In April 2006 the Masorti movement petitioned the High Court regarding the fee. On February 12, 2007, the Masorti movement withdrew its petition after reaching an agreement with the Government that extended the hours allotted for free access to the Robinson Arch for the purpose of prayer.

The Los Angeles-based Simon Wiesenthal Center began construction in 2004 of a \$150 million Center for Human Dignity and Museum of Tolerance in Jerusalem. The Wiesenthal Center began building on the site of a municipal parking lot, which local officials had built in the 1960s over part of a centuries-old Muslim cemetery. Supporters of the Wiesenthal Center cited an 1894

ruling by the Shari'a court at the time, which stated that because the cemetery was abandoned, it was no longer sacred. During the reporting period, builders unearthed hundreds of skeletons and skeletal remains. After several Muslim organizations petitioned the High Court to stop construction, the court ordered the sides to arbitration and issued an injunction stopping construction work. The arbitration failed, and in January 2007 the High Court ordered the Wiesenthal Center and the Jerusalem Municipality to explain why they should be allowed to construct a museum on the site of an ancient Muslim cemetery. The case was ongoing at the end of the reporting period.

There were no reports of religious prisoners or detainees in the country.

Forced Religious Conversion

There were no reports of forced religious conversion, including of U.S. citizen minors who had been abducted or illegally removed from the United States, or of the refusal to allow such citizens to be returned to the United States.

A 1977 anti-proselytizing law prohibits any person from offering or receiving material benefits as an inducement to conversion.

Persecution by Terrorist Organizations

During the reporting period, terrorist organizations, including Hamas, Palestinian Islamic Jihad, and Al Aqsa Martyrs Brigades, carried out several attacks against Jewish Israelis. Terrorists sometimes accompanied the attacks with anti-Semitic rhetoric.

Improvements and Positive Developments in Respect for Religious Freedom

In December 2006 the National Police promoted Jamal Hakrush, a Muslim, to the position of Assistant Commander, the highest rank ever attained by an Israeli-Arab Muslim. In January 2007 Ghaleb Majadle, a Muslim member of the Labor Party, became the first-ever Muslim cabinet minister during a reshuffling of cabinet posts. In addition, for the first time since the establishment of the state, the appointment of an Arab Christian as a permanent justice of the High Court occurred in 2004.

According to government data, the number of non-Jewish directors on the boards of state-owned companies increased from 5.5 percent in 2002 to 10 percent in 2006. As of November 2006, according to the Government, Arabs comprised 54 of the approximately 550 board seats of 105 state-run companies.

In June 2006 the 35th World Zionist Congress passed a resolution obligating the Jewish Agency to include Israeli-Arab communities in its development plans for the country. The agency has never been active before in the Arab and Druze communities. The resolution's proponents succeeded through a rare collaborative effort between Reform and Orthodox groups, who combined to overcome the opposition of delegates from some political parties, including Kadima, Herut, and Yisrael Beiteinu. During the summer 2006 conflict with Hizballah, the

Jewish Agency provided relief to Muslim and Christian children in the Galilee -- where most of Hizballah's rockets landed -- by sending them to summer camps outside of the conflict zone. In the aftermath of the conflict, the Jewish Agency collaborated with other donors to rehabilitate Israeli-Arab communities in the north.

Section III. Societal Abuses and Discrimination

There were reports of societal abuses or discrimination based on religious belief or practice. Relations among religious and ethnic groups--between Jews and non-Jews, Muslims and Christians, Arabs and non-Arabs, secular and religious Jews, and among the different streams of Judaism--often were strained. Tensions between Jews and non-Jews were the result of historical grievances as well as cultural and religious differences, and they were compounded by governmental and societal discrimination against Israeli-Arabs, both Muslim and Christian. These tensions were heightened by the summer 2006 conflict with Hizballah and the ongoing Palestinian-Israeli conflict, which included terrorist attacks targeting Jewish civilians, IDF operations in the Occupied Territories, incidents of Jewish militants targeting Israeli-Arabs, and incidents of Israeli-Arab involvement in terrorist activity.

Numerous NGOs in the country were dedicated to promoting Jewish-Arab coexistence and interfaith understanding. Their programs included events to increase productive contact between religious groups and to promote Jewish-Arab dialogue and cooperation. These groups and their events have had varying degrees of success. Interfaith dialogue often was linked to the peace process between Israelis and Palestinians and between the country and its Arab neighbors. A variety of NGOs existed that sought to build understanding and create dialogue between religious groups and between religious and secular Jewish communities. Several examples were the Geshar Foundation (Hebrew for "bridge"); Meitarim, which operates a pluralistic Jewish-oriented school system; and the Interreligious Coordinating Council, which promoted interfaith dialogue among Jewish, Muslim, and Christian institutions.

Animosity between secular and religious Jews continued during the period covered by this report. Non-Orthodox Jews have complained of discrimination and intolerance by members of ultra-Orthodox Jewish groups. Persons who consider themselves Jewish but who are not considered Jewish under Orthodox law particularly complained of discrimination. As in past years, ultra-Orthodox Jews in Jerusalem and other ultra-Orthodox enclaves threw rocks at passing motorists driving on the Sabbath and periodically harassed or assaulted women whose appearance they considered immodest.

Throughout society, attitudes toward missionary activities and conversion generally were negative. Many Jews were opposed to missionary activity directed at Jews, and some were hostile toward Jewish converts to Christianity. The Messianic Jewish and Jehovah's Witnesses communities accused Yad L'achim, a Jewish religious organization opposed to missionary activity, of harassing and occasionally assaulting its members. In October 2006 the Chief Rabbi of Rehovot's Ethiopian community warned that if a Christian group in the Tel Aviv suburb did not cease its activities, community members would bomb its headquarters. The Rabbi accused the mission of tricking and bribing Ethiopian Jews into conversion. Rehovot's Chief Rabbi joined the Ethiopian Rabbi's demand that the municipality evict the group. Christian and Muslim

Israeli-Arab religious leaders complained that missionary activity that leads to conversions frequently disrupts family coherence in their communities.

In May 2006 vandals spray painted approximately 20 swastikas on the ark, Torah scroll, and walls of the great synagogue in the city of Petah Tikva. On January 29, 2007, police arrested six juveniles from the town of Bat Yam and charged them with the Petah Tikva crime and other acts of anti-Semitic vandalism. According to press reports, the youths--new immigrants from the former Soviet Union--admitted to belonging to a neighborhood-based satanic cult. On December 1, 2006, vandals destroyed property and painted swastikas on an ultra-Orthodox Jewish school in Acre.

An observer reported that a group of approximately 200 ultra-Orthodox Jews violently disrupted the religious service of a Messianic congregation in Be'er Sheva on December 24, 2005. According to the account, the group pushed and slapped the congregation's pastor and damaged property. Police dispersed the mob. On December 26, 2005, the observer filed a report with the Be'er Sheva police. Members of the congregation subsequently filed charges against the assailants. The Be'er Sheva District Court scheduled the case for trial on October 8, 2007.

Members of the Messianic Jewish community in Arad reported suffering verbal harassment and physical violence at the hands of ultra-Orthodox Jews. In July 2005 the Messianic congregation in Arad published a letter in Iton HaTzvi that reported harassment by members of an ultra-Orthodox community. In September 2005 the High Court heard a petition by ultra-Orthodox Jews seeking the right to demonstrate at the house of a family of Messianic Jews and reversal of a police decision prohibiting such a demonstration. At end of the reporting period there was no further information on a court ruling. According to Messianic Jews resident in Arad, since 2004 the Gur Hassidim have demonstrated regularly in front of the homes of Christians and Messianic Jews in Arad to protest alleged Christian proselytizing by this group. In interviews with Ha'aretz newspaper on November 14, 2006, the mayor and several officials of Arad objected to Messianic Jews in their city but acknowledged having no legal basis to expel them.

In August 2005 police arrested Shimon Ben Haim and Victoria Shteinman for desecrating a Muslim holy site by throwing a pig's head, wrapped in a Keffiyeh with "Mohammed" written on it, into the courtyard of a mosque near Tel Aviv. Ben Haim and Shteinman were subsequently convicted of insulting a religion. On December 6, 2006, Ben Haim was sentenced to nine months' imprisonment and Shteinman was sentenced to two months' community service.

In May 2006 Israeli youths celebrating the holiday of Lag Ba'Omer, a day traditionally marked by the lighting of bonfires, allegedly attempted to set fire to an abandoned mosque in the northern city of Acre. The individuals claimed they were simply preparing to light a bonfire, but police found indications of attempted arson. The case was closed at the end of 2006 with none of the individuals publicly identified.

Section IV. U.S. Government Policy

The U.S. Government discusses religious freedom problems with the Government as part of its overall policy to promote human rights. The U.S. Embassy consistently raised problems of

religious freedom with the Foreign Ministry, the police, the Prime Minister's office, and other government agencies.

Embassy officials maintain a dialogue with NGOs that follow human and civil rights problems, including religious freedom, and promote interfaith initiatives. Embassy representatives also attended and spoke at meetings of such organizations, including the Arab Association for Human Rights, the Mossawa Advocacy Center for Arab Citizens in Israel, the Association for Civil Rights in Israel, the Israel Religious Action Center, and Adalah.

THE OCCUPIED TERRITORIES (INCLUDING AREAS SUBJECT TO THE JURISDICTION OF THE PALESTINIAN AUTHORITY)

The Palestinian Authority (PA) does not have a constitution; however, the Palestinian Basic Law provides for freedom of religion, and the PA generally respected this right in practice. The Basic Law states that Islam is the official religion but also calls for respect and sanctity for other "heavenly" religions and that the principles of Shari'a (Islamic law) shall be the main source of legislation.

There was little change in the status of the PA's respect for religious freedom during the reporting period. On June 17, 2007, PA President Mahmoud Abbas swore in a new PA Government led by Prime Minister Salam Fayyad. President Abbas took steps to eliminate religious incitement, although some incidents of incitement still occurred. There were unconfirmed reports of Christians being targeted for extortion or abuse during the period covered by this report, and the PA did not take action to investigate these injustices allegedly perpetrated by PA officials.

Israel exercises varying degrees of legal, military, and economic control in the Occupied Territories. Israel has no constitution; however, the Basic Law on Human Dignity and Liberty provides for freedom of worship. The Israeli Government generally respects this right in practice in the Occupied Territories. However, Israel's strict closure policies frequently restricted the ability of Palestinians to reach places of worship and to practice their religions.

The construction of a separation barrier by the Government of Israel, particularly in and around East Jerusalem, severely limited access to mosques, churches, and other holy sites, and seriously impeded the work of religious organizations that provide education, healthcare, and other humanitarian relief and social services to Palestinians. Such impediments were not exclusive to religious believers or to religious organizations, and at times the Israeli Government made efforts to lessen the impact on religious communities. The Israeli Government confiscated land belonging to several religious institutions to build its separation barrier. Most Palestinians and religious institutions refuse compensation due to the widespread perception that accepting compensation legalizes the confiscation of land and building of the barrier. According to the Israeli Government, it sought to build the barrier on public lands where possible, and when private land was used, provided opportunities for compensation. In principle, compensation is offered automatically with every confiscation order; however, owners need to go through an appeals process. The value of the compensation is not automatic and is subject to appraisal and verification.

Christians and Muslims generally enjoyed good relations, although tensions existed. Existing societal tensions between Jews and non-Jews remained high during the reporting period, and continuing violence heightened those tensions. The violence that occurred after the outbreak of the second Intifada (or uprising) in October 2000 significantly impacted religious practice in many areas of the Occupied Territories. This violence included severe damage to places of worship and religious shrines in the Occupied Territories.

The U.S. Government had no contact with the previous PA governments led by Hamas and was unable to discuss religious freedom problems with the PA as part of its overall policy to promote human rights. The U.S. Government did have contact with President Abbas.

Section I. Religious Demography

The Gaza Strip has an area of 143 square miles and a population of 1.3 million. The West Bank (excluding East Jerusalem) has an area of 2,238 square miles, and its population is 2.4 million persons, not including approximately 250,000 Israelis. East Jerusalem has an area of 27 square miles, and its population is 415,000, including approximately 180,000 Israelis.

Approximately 98 percent of Palestinian residents of the Occupied Territories are Sunni Muslims. The total number of Christians is 200,000. Other estimates placed the Christian community between 40,000 and 90,000 persons. A majority of Christians are Greek Orthodox; the remainder consists of Roman Catholics, Greek Catholics, Protestants, Syrian Orthodox, Armenian Orthodox, Copts, Maronites, and Ethiopian Orthodox denominations. Christians are concentrated primarily in the areas of Jerusalem, Ramallah, and Bethlehem, but smaller communities exist elsewhere, including in Gaza. According to municipal officials in Bethlehem, since 2002 approximately 2,800 Christians from the Bethlehem area have left the West Bank for other countries. According to Christian leaders, most left for economic and security reasons. Low birth rates among Palestinian Christians and the impact of the separation barrier also contribute to their shrinking numbers. There is also a community of approximately 400 Samaritans located on Mount Gerazim near Nablus in the West Bank.

Adherents of several denominations of evangelical Christians, as well as members of the Jehovah's Witnesses, reside in the West Bank. Foreign missionaries operate in the Occupied Territories, including a small number of evangelical Christian pastors who reportedly sought to convert Muslims to Christianity. While they maintained a generally low profile, the PA was aware of their activities and generally did not restrict them.

Section II. Status of Religious Freedom

Legal/Policy Framework

The PA does not have a constitution; however, the Basic Law provides for religious freedom, and the PA generally respected this right in practice. The PA sought to protect religious freedom in full and did not tolerate its abuse by either governmental or private actors. In previous years, there were credible reports that PA security forces and judicial officials colluded with criminal elements to extort property illegally from Christian landowners in the Bethlehem area. Christian

landowners in Bethlehem continued to claim that their property was being taken from them illegally.

The Basic Law states that "Islam is the official religion in Palestine," and that "respect and sanctity of all other heavenly religious groups [i.e., Judaism and Christianity] shall be maintained." In 2002 the Basic Law was approved by the Palestinian Legislative Council (PLC) and signed by then-President Yasir Arafat. The Basic Law states that the principles of Shari'a are "the main source of legislation."

Churches in Jerusalem, the West Bank, and Gaza operate under one of three general categories: Churches recognized by the status quo agreements reached under Ottoman rule in the late 19th century; Protestant, including evangelical, churches established between the late 19th century and 1967, which, although they exist and operate, are not recognized officially by the PA; and a small number of churches that have become active within the last decade and whose legal status is less certain.

The first group of churches is governed by 19th century status quo agreements reached with Ottoman authorities, which the PA respects, and that specifically established the presence and rights of the Greek Orthodox, Roman Catholic, Armenian Orthodox, Assyrian, Syrian Orthodox, Greek Catholic, Coptic, and Ethiopian Orthodox churches. The Episcopal and Lutheran Churches were added later to this list. The PA, immediately upon its establishment, recognized these churches and their rights. Like Shari'a courts under Islam, these religious groups are permitted to have ecclesiastical courts whose rulings are considered legally binding on personal status and some property matters. Civil courts do not adjudicate such matters.

Churches in the second category, which includes the Assembly of God, Nazarene Church, and some Baptist churches, have unwritten understandings with the PA based on the principles of the status quo agreements. They are permitted to operate freely and are able to perform certain personal status legal functions, such as issuing marriage certificates.

The third group of churches consists of a small number of proselytizing churches, including Jehovah's Witnesses and some evangelical Christian groups. These groups have encountered opposition to their efforts to obtain recognition, both from Muslims, who oppose their proselytizing, and from Christians, who fear the new arrivals may disrupt the status quo. However, these churches generally operate unhindered by the PA.

The PA requires Palestinians to declare their religious affiliation on identification papers and strongly enforces this requirement. Either Islamic or Christian ecclesiastical courts must handle all legal matters relating to personal status, if such courts exist for the individual's denomination. In general all matters related to personal status (i.e., inheritance, marriage, and divorce) are handled by such courts, which exist for Muslim and Christians.

All legally recognized individual sects are empowered to adjudicate personal status matters, and in practice most did so. The PA does not have a civil marriage law. Legally, members of one religious group mutually may agree to submit a personal status dispute to a different denomination to adjudicate, but in practice this did not occur. Churches that are not officially

recognized by the PA must obtain special permission to perform marriages or adjudicate personal status matters; however, in practice nonrecognized churches advised their members to marry (or divorce) abroad.

Since Islam is the official religion of the PA, Islamic institutions and places of worship receive preferential treatment. In the West Bank and Gaza, the PA has a Ministry of Awqaf and Religious Affairs, which pays for the construction and maintenance of mosques and the salaries of many Palestinian imams. The Ministry also provides limited financial support to some Christian clergymen and Christian charitable organizations. The PA does not provide financial support to any Jewish institutions or holy sites in the West Bank; these areas are generally under Israeli control. The Government of Jordan maintains responsibility for Waqf institutions in Jerusalem.

The PA requires the teaching of religion in PA schools, with separate courses for Muslim and Christian students. A compulsory curriculum requires the study of Christianity for Christian students and Islam for Muslim students in grades one through six. The PA Ministry of Education and Higher Education (MOEHE) revised its primary and secondary school textbooks. A U.S. Government funded review of Palestinian textbooks concluded that the textbooks did not cross the line into incitement but continued to show elements of imbalance, bias, and inaccuracy.

Critics noted the new textbooks often ignored historical Jewish connections to Israel and Jerusalem.

PA President Abbas had informal advisors on Christian affairs. Six seats in the 132-member PLC are reserved for Christians; there are no seats reserved for members of any other faith. The following holy days are considered national holidays: Eid al-Fitr, Eid al-Adha, Zikra al-Hijra al-Nabawiya, Christmas, and the Birth of the Prophet Muhammad. Christians take Easter as a fully paid religious holiday.

Israel exercises varying degrees of legal control in the Occupied Territories. The international community considers Israel's authority in the Occupied Territories to be subject to the 1907 Hague Convention and the 1949 Geneva Convention relating to the Protection of Civilians in Time of War. The Israeli Government considers only the 1907 Hague Convention applicable but maintains that it largely observes the Geneva Convention's humanitarian provisions. The Israeli Government applies Israeli law to East Jerusalem, which it annexed after 1967; however, the U.S. Government considers Jerusalem a permanent status issue to be resolved in negotiations between Israel and the Palestinians.

Restrictions on Religious Freedom

PA government policy contributed to the generally free practice of religion, although problems persisted. The Haram al-Sharif (Noble Sanctuary) contains the Dome of the Rock and the al-Aqsa Mosque, among the holiest sites in Islam. Jews refer to the same place as the Temple Mount and consider it the location of the ancient Jewish temple. The location has been, as with all of East Jerusalem, under Israeli control since 1967, when Israel captured the city (East Jerusalem was formally annexed in 1980, and thus Israel applies its laws to East Jerusalem). The

Haram al-Sharif is administered, however, by the Islamic Waqf, a Jordanian-funded and administered Muslim religious trust for East Jerusalem with ties to the PA. The Israeli police have exclusive control of the Mughrabi Gate entrance to the compound and limit access to the compound from all entrances. The Waqf can object to entrance of particular persons, such as non-Muslim religious radicals, or to prohibited activities, such as prayer by non-Muslims or disrespectful clothing or behavior, but lacks effective authority to remove anyone from the site. In practice Waqf officials claimed that police often allowed religious radicals (such as Jews seeking to remove the mosques and to rebuild the ancient temple on the site) and immodestly dressed persons to enter and often were not responsive to enforcing the site's rules. During Passover in 2007, Israeli police escorted more than 100 activists affiliated with the right-wing group "The Temple Mount Faithful" to enter the compound on two consecutive days, the second day while carrying a model of the Second Temple.

Non-Muslims may visit the Haram al-Sharif/Temple Mount, with advance coordination with Waqf officials. The Israeli Government, as a matter of stated policy, has opposed worship at the Haram al-Sharif/Temple Mount by non-Muslims since 1967. Israeli police generally did not permit public prayer by non-Muslims and publicly indicated that this policy has not changed in light of the renewed visits of non-Muslims to the compound. However, Waqf officials contended that Israeli police, in contravention of their stated policy and the religious status quo, have allowed members of radical Jewish groups to enter and to worship at the site, including during Passover 2007. Representatives for these Jewish groups claimed successful attempts to pray inside the compound in interviews with the Israeli media. The Waqf interpreted police actions as part of an Israeli policy to incrementally reduce Waqf authority over the site and to give non-Muslims rights of worship in parts of the compound.

There were several violent clashes during the reporting period between Israeli police and Muslim worshippers on the Haram al-Sharif, which Waqf officials alleged were due to the large police contingent kept on the site. At times Muslim worshippers threw stones at police, and police fired tear gas and stun grenades at worshippers. Muslim worshippers also held demonstrations at the site to protest reported right-wing Israeli nationalist plans to damage the mosques or create a Jewish worship area at the site. Israeli security officials and police were generally proactive and effective in dealing with such threats.

Citing violence and security concerns, the Israeli Government has imposed a broad range of strict closures and curfews throughout the Occupied Territories since October 2000. These restrictions largely continued during the reporting period and resulted in significantly impeded freedom of access to places of worship in the West Bank for Muslims and Christians.

The Israeli Government prevented most Palestinians from the West Bank and Gaza from reaching the Haram al-Sharif by prohibiting their entry into Jerusalem. Restrictions were often placed on entry into the Haram al-Sharif for Palestinian residents of Jerusalem, especially males under the age of 45. During the clashes surrounding the excavations at the Mughrabi Gate ramp in 2007, males under the age of 50 were prohibited entry to the Haram al-Sharif.

There were also disputes between the Muslim administrators of the Haram al-Sharif/Temple Mount and Israeli authorities regarding Israeli restrictions on Waqf attempts to carry out repairs

and physical improvements on the compound and its mosques. Israeli authorities prevented the Waqf from conducting several improvement projects and removing debris from previous restorations to the site, alleging that the Waqf was attempting to alter the nature of the site or to discard antiquities of Jewish origin. Israeli authorities began excavations near the Mughrabi gate, preparing to build a permanent ramp onto the Haram al-Sharif/Temple Mount. Waqf officials were not allowed access to the excavations in early 2007 and claimed they were not consulted in any part of the planning process for either the excavations or the ramp that will be constructed to replace the existing ramp. At the end of this reporting period, the excavations were suspended.

Personal status law for Palestinians is based on religious law. For Muslim Palestinians, personal status law is derived from Shari'a, while various ecclesiastical courts rule on personal status matters for Christians. A 1995 PA presidential decree stipulated that all laws in effect before the advent of the PA would continue in force until the PA enacted new laws or amended the old ones. Therefore, in the West Bank, which was formerly under Jordanian rule, the Shari'a-based Jordanian Status Law of 1976 governs women's status (among other matters). Under that law, which includes inheritance and marriage laws, women inherit less than male members of the family. The marriage law allows men to take more than one wife, although few did so. Prior to marriage, a woman and man may stipulate terms in the marriage contract that govern financial and child custody matters in the event of divorce. Reportedly, few women used this section of the law.

Women generally are discouraged from including divorce arrangements in a marriage contract as a result of social pressure. The PA personal status law states that child custody for children below the age of 18 is given to the mother. Child support and "divorce benefits" are also guaranteed by law. It is also customary that a sizable sum of a deferred dowry is documented in the marriage contract. Personal status law in Gaza is Shari'a-based as interpreted in Egypt; however, similar versions of the attendant restrictions on women described above apply there as well.

The Israeli Government, citing security concerns, has continued since 2002 to construct a barrier to separate most of the West Bank from Israel, East Jerusalem, and Israeli settlement blocks. Construction of the barrier has involved confiscation of property owned by Palestinians, displacement of Christian and Muslim residents, and tightening of restrictions on movement for non-Jewish communities. There were several reports of land being taken along the barrier's route without compensation under the Absentee Property Statute or military orders. The Israeli Government asserted that it has mechanisms to compensate landowners for all takings, but specific cases document the exceptional difficulty Palestinians had in proving their land ownership to the standards demanded by Israeli courts.

Construction of the separation barrier continued in and around East Jerusalem during the reporting period, seriously restricting access by West Bank Muslims and Christians to holy sites in Jerusalem and in the West Bank. The barrier also negatively affected access to schools, healthcare providers, and other humanitarian services provided by religious institutions, although in some cases the Government made efforts to lessen the impact on religious institutions.

The separation barrier made it particularly difficult for Bethlehem-area Christians to reach the Church of the Holy Sepulchre in Jerusalem, and it made visits to Christian sites in Bethany and in Bethlehem difficult for Palestinian Christians who live on the other side of the barrier, further fragmenting and dividing this small minority community. Foreign pilgrims sometimes experienced difficulty in obtaining access to Christian holy sites in the West Bank because of the barrier and Israeli restrictions on movement in the West Bank. The barrier and checkpoints also impeded the movement of clergy between Jerusalem and West Bank churches and monasteries, as well as the movement of congregations between their homes and places of worship. On November 15, 2005, Israel opened a new crossing terminal from Jerusalem into Bethlehem for both tourists and nontourists. After initial complaints of long lines, the Israeli Government instituted new screening procedures and agreed to ease access into Bethlehem during the Christmas holiday season, with restrictions eased from December 24 to January 19. For example, the PA reported 30,000 visitors to the Church of the Nativity for various Christmas celebrations on December 24-25, 2005, the largest turnout since 2000. Bethlehem business owners estimated tourist numbers near 12,000 for 2006.

The Government of Israel has constructed a barrier around Rachel's Tomb, a shrine holy to Jews, Christians, and Muslims. While Jewish visitors had regular unimpeded access, Palestinian access to Rachel's Tomb remained severely limited.

The barrier in Bethany blocks the annual Orthodox Palm Sunday procession from Lazarus' Tomb in Bethany to the Old City of Jerusalem, but Israel constructed a crossing terminal to allow foreign pilgrims and Christians living on the West Bank side of the barrier to participate in the procession. The terminal allows restricted access through the barrier.

Israeli closure policies prevented tens of thousands of Palestinians from reaching places of worship in Jerusalem and the West Bank, including during religious holidays such as Ramadan, Christmas, and Easter. The Israeli Government's closure policy prevented several Palestinian religious leaders, both Muslim and Christian, from reaching their congregations. Muslim and Christian clergy reported problems accessing religious sites in Jerusalem and Bethlehem. While the Israeli Government makes special arrangements on religious holidays for both Christians and Muslims, the main complaint remained inadequate free access arrangements in terms of number of permits issued and lack of smooth access.

During the reporting period, Palestinian violence against Israeli settlers prevented some Israelis from reaching Jewish holy sites in the Occupied Territories, such as Joseph's Tomb near Nablus. Since early 2001, following the outbreak of the Intifada, the Israeli Government has prohibited Israeli citizens in unofficial capacities from traveling to the parts of the West Bank under the civil and security control of the PA. This restriction prevented Israeli Arabs from visiting Muslim and Christian holy sites in the West Bank, and it prevented Jewish Israelis from visiting other sites, including an ancient synagogue in Jericho. Visits to the Jericho synagogue have been severely curtailed as a result of disagreements between Israel and the PA over security arrangements.

Settler violence against Palestinians prevented some Palestinians from reaching holy sites in the Occupied Territories. Settlers in Hebron have in previous reporting periods forcibly prevented

Muslim muezzins from reaching the al-Ibrahimi Mosque/Tomb of the Patriarchs to sound the call to prayer and have harassed Muslim worshippers in Hebron. Settler harassment of Palestinians in Hebron was a regular occurrence in this reporting period. The Israeli Government did not effectively respond to settler-initiated blocking of Muslim religious sites.

While there were no specific restrictions placed on Palestinians making the Hajj, all Palestinians faced restrictions, such as closures and long waits at Israeli border crossings, which often impeded travel for religious purposes. Palestinians generally were not allowed to use Ben-Gurion Airport. If residents of the Occupied Territories obtained a Saudi Hajj visa, they had to travel by ground to Amman (for West Bankers) or Egypt (for Gazans) and then to Saudi Arabia.

Abuses of Religious Freedom

The Israeli Government gives preferential treatment to Jewish residents of the Occupied Territories, including East Jerusalem, when granting permits for home building and civic services. For example, East Jerusalem's 270,000 Palestinian residents, who represent 33 percent of the municipality's population and pay 30 percent of the taxes, receive only 10 percent of the municipal budget. Palestinians do not recognize Israeli control of East Jerusalem and thus generally choose not to vote in municipal elections and are therefore not represented in the municipal council. Many of the national and municipal policies in Jerusalem are designed to limit or diminish the non-Jewish population of Jerusalem. According to Palestinian and Israeli human rights organizations, the Israeli Government uses a combination of zoning restrictions on building for Palestinians, confiscation of Palestinian lands, and demolition of Palestinian homes to "contain" non-Jewish neighborhoods while simultaneously permitting Jewish settlement in predominantly Palestinian areas in East Jerusalem.

Throughout the reporting period, Israeli authorities required that Christian clergy serving in the West Bank or Jerusalem, except some of those covered by the status quo agreement or who are affiliated with recognized nongovernmental organization (NGOs), leave the country every 90 days to renew their tourist visas, disrupting their work and causing financial difficulties to their sponsoring religious organizations. Catholic and Orthodox priests, nuns, and other religious workers, often from Syria and Lebanon, faced long delays and sometimes were denied applications. The Israeli Government indicated that delays or denials were due to security processing for visas and extensions. The shortage of foreign clergy impeded the functioning of Christian congregations.

During Jewish holidays the Israeli Defense Force (IDF) closes to Muslims the Ibrahimi Mosque/Tomb of the Patriarchs in Hebron, the second most important mosque for Muslims in the Occupied Territories after Al Aqsa Mosque/Temple Mount. The IDF reopens the al-Ibrahimi Mosque/Tomb of the Patriarchs in Hebron to Muslim worship for times other than during Jewish holidays. During the reporting period, Israeli officers at times prevented the muezzin at the al-Ibrahimi Mosque/Tomb of the Patriarchs in Hebron from sounding the call to prayer when Jews were praying in their portion of the shrine.

In previous reporting periods, the PA failed to halt several cases of seizures of Christian-owned land in the Bethlehem area by criminal gangs. In many cases criminal gangs reportedly used

forged land documents to assert ownership of lands belonging to Christians. Police failed to investigate most of these cases. In two cases police arrested and then released the suspects on bail and allowed them to continue occupying the land in question. There were reports this reporting period that PA security forces and judicial officials colluded with members of these gangs to seize land from Christians. Local religious and political leaders confirmed that no such attempts to seize Muslim-owned land took place.

In September 2006 a Christian resident of Bethlehem claimed unknown assailants threw Molotov cocktails at his home and car. He believed this was in retaliation for his criticism of the stealing of Christian land in the city. He complained that PA officials were not doing anything to apprehend the perpetrators.

The Qalqilya branch of the YMCA closed following a firebombing of its office by local Muslims in April 2006. Local Muslim leaders wrote to the Hamas-led municipal council demanding that the branch office close. During the reporting period, the YMCA offices remained closed as a result of this incident. Various political factions in the city condemned the incident, but no action was taken to reveal and punish the perpetrators.

There were no reports of religious prisoners or detainees in the Occupied Territories.

Forced Religious Conversions

There were no reports of forced religious conversion, including of minor U.S. citizens who had been abducted or illegally removed from the United States, or of the refusal to allow such citizens to be returned to the United States.

Anti-Semitism

Palestinian media frequently published and broadcast material criticizing the Israeli occupation, including dismissing Jewish connections to Jerusalem. In September 2005 Sheikh Taysir al-Tamimi, the Chief Justice and President of the Higher Shari'a Council, called the Israeli Government's claim of a Jewish connection to the Haram al-Sharif/Temple Mount a "baseless lie" and a provocation to Muslims everywhere. Al-Tamimi also warned against the "Judaization" of Jerusalem. Rhetoric by Palestinian terrorist groups included expressions of anti-Semitism. Some Muslim religious leaders preached sermons on the official PA television station that included expressions of anti-Semitism. However, in October 2005, Israeli media quoted PLO Chief Negotiator Sa'eb Erekat's statement that the Iranian President's declaration that Israel should be wiped off the map was "unacceptable."

Israeli activists reported numerous examples in which PA television shows invoked messages that activists considered anti-Semitic or that attempted to de-legitimize Jewish history in general. Also, the sermons of some Muslim imams occasionally included anti-Semitic messages, such as a May 13, 2005, sermon delivered by Sheikh Ibrahim Mudayris that ran on PA television, in which he compared Jews (in the context of land conflicts) to "a virus, like AIDS." In May 2005 media quoted PA Minister of Information Nabil Sh'ath as calling for Mudayris' suspension from the PA religious affairs ministry and Muslim Waqf, which employed Mudayris, and banned him

from delivering Friday sermons. At the end of the reporting period, Mudayris was no longer delivering Friday sermons.

Persecution by Terrorist Organizations

Terrorists did not systematically attack anyone in the Occupied Territories for religious reasons, although criminal activity that might be linked to terrorism affected some Christians in the Gaza Strip. In June 2007 unknown marauders ransacked a Christian book in Gaza during the general disorder following the Hamas take-over of Gaza. Official PA authorities in the Hamas-controlled government often failed to effectively investigate or prosecute religiously driven crimes committed by Muslim extremist vigilante groups in Gaza.

Improvements and Positive Developments in Respect for Religious Freedom

The PA does not officially sponsor interfaith dialogue; however, it sends representatives to meetings on improving interreligious relations and attempts to foster goodwill among religious leaders.

Section III. Societal Abuses and Discrimination

There were reports of societal abuses or discrimination based on religious belief or practice, primarily between Christians and Muslims. Relations between Jews and non-Jews often were strained as a result of the Palestinian-Israeli conflict, as well as Israel's control of access to sites holy to Christians and Muslims. Relations among different branches of Judaism were also strained. Some non-Orthodox Jews in Jerusalem have complained of discrimination and intolerance on the part of some Orthodox Jews.

Societal attitudes continued to be a barrier to conversions, especially for Muslims converting to Christianity; however, conversion is not illegal in the Occupied Territories. Muslim-Christian tension was minimal during this reporting period, and the few instances of Muslim-Christian violence usually appeared related to social or interfamily conflicts rather than religious disputes. Both Muslim and Christian Palestinians accused Israeli officials of attempting to foster animosity among Palestinians by exaggerating reports of Muslim-Christian tensions.

The PA has not taken sufficient action to remedy past harassment and intimidation of Christian residents of Bethlehem by the city's Muslim majority. The PA judiciary failed to adjudicate numerous cases of seizures of Christian-owned land in the Bethlehem area by criminal gangs. PA officials appear to have been complicit in property extortion of Palestinian Christian residents, as there were reports of PA security forces and judicial officials colluding with gang members in property extortion schemes. Several attacks against Christians in Bethlehem went unaddressed by the PA, but authorities investigated attacks against Muslims in the same area.

On September 16 and 17, 2006, seven churches in the West Bank and Gaza were attacked in protest against remarks Pope Benedict XVI made about Islam and the Prophet Mohammad. Palestinian leaders across the political spectrum condemned the attacks against churches, calling for unity among all Palestinians--Christian and Muslim.

There were numerous attacks in the Gaza Strip by extremist groups who went by variations of the name "Swords of Right, Swords of Justice, and Swords of Islam." PA police blamed Swords of Right for April 2007 attacks on five internet cafes, two music shops, a Christian bookstore, and the Gaza City American International School. Gunmen reportedly associated with a Salafist Muslim group attacked a Gazan elementary school sports festival sponsored by the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), citing the school's mixed-gender activities as contrary to Islamic teachings.

Israeli settler radio stations often depicted Arabs as subhuman and called for Palestinians to be expelled from the West Bank. Right-wing, pro-settler organizations such as Women in Green, and various Hebron-area publications, have published several cartoons that demonize Palestinians. Jewish settlers, acting either alone or in groups, engaged in assaulting Palestinians and destroying Palestinian property. Most instances of violence or property destruction reportedly committed against Palestinians did not result in arrests or convictions.

Interfaith romance was a sensitive issue. Most Christian and Muslim families in the Occupied Territories encouraged their children--especially their daughters--to marry within their respective religious groups. Couples who challenged this societal norm encountered considerable societal and familial opposition.

In March 2005 a dispute over the sale of property in Jerusalem's Old City owned by the Greek Orthodox Church to investors led a Holy Synod meeting in Istanbul to depose the Greek Patriarch of Jerusalem, Irineos I, in May 2005. Irineos I claimed that proceedings against him were illegal and refused to resign. While Greece, Jordan, and the Palestinian Authority recognized the ousting of Irineos and the appointment of Theophilus III as his successor, the Government of Israel did not. In November 2005 Theophilus appealed this issue to the Israeli High Court, and at the same time a ministerial committee was established to deal with the situation. At the end of the reporting period, the committee had not resolved the issue, and the Government of Israel continued to recognize the deposed Patriarch. The High Court was scheduled to hear the case in November 2007.

In general, established Christian groups did not welcome less-established churches. A small number of proselytizing groups, including Jehovah's Witnesses and some evangelical Christians, encountered opposition to their efforts to obtain recognition, both from Muslims, who opposed their proselytizing, and from Christians, who feared the new arrivals might disrupt the status quo.

Settlers from the Hebron area and the southern West Bank severely beat and threatened several international activists, including individuals from the Christian Peacemaker Teams that escort Palestinian children to school and protect Palestinian families from settler abuse. While the motives of the attackers were not clear, the activists believed that local Israeli police did not actively pursue the suspects and opposed the Christian Peacemaker Teams' presence in Palestinian villages.

There were instances of right-wing Israeli nationalists harassing Muslims. On several occasions, a group known as the Temple Mount Faithful attempted to force their way inside the wall enclosing the Haram al-Sharif/Temple Mount. In addition, the same group periodically attempted

to lay a cornerstone for the building of a new Jewish temple that would replace the Islamic Dome of the Rock, an act that Muslims considered provocative and offensive. Members of this organization were allowed access to the Haram a-Sharif/Temple Mount, including access to the Dome of the Rock, during Passover 2007.

The strong correlation between religion, ethnicity, and politics in the Occupied Territories at times imbues the Israeli-Palestinian conflict with a religious dimension.

Section IV. U.S. Government Policy

Prior to the establishment of the Hamas-led PA Governments in January 2006, U.S. officials discussed religious freedom matters with the PA as part of its overall policy to promote human rights. In March 2007 the Hamas-led PA Government resigned and was replaced by a National Unity Government comprised of Hamas, Fatah, and independents. In June 2007, in the aftermath of the Hamas takeover of the Gaza Strip, President Abbas appointed Salam Fayyad as prime minister and Fayyad formed a new government. U.S. officials resumed contact with PA officials near the end of the reporting period. Contact has remained consistent with PA President Abbas and officials in the Office of the PA President and other officials in agencies directly under the authority of the PA President.

The U.S. Consulate regularly meets with religious representatives to ensure their legitimate grievances are reported and addressed. The Consulate maintains a high level of contact with representatives of the Jerusalem Waqf, an Islamic trust and charitable organization that owns and manages large amounts of real estate, including the Haram al-Sharif/Temple Mount in Jerusalem. U.S. officials had frequent contact with Islamic leaders throughout Jerusalem, the West Bank, and Gaza. The Consulate also maintained regular contact with leaders of the Christian, Baha'i, and Jewish communities in Jerusalem and the West Bank. During the reporting period, the Consul General and Consulate officers met with the Greek, Latin, and Armenian Patriarchs, leaders of the Syrian Orthodox, Russian Orthodox, Coptic, Anglican, and Lutheran churches, as well as members of the Church of Jesus Christ of Latter-day Saints (Mormons). U.S. officials also met with members of the Baha'i religious group and held frequent consultations with rabbis and other central figures from the Ultra-orthodox and other Jewish communities.

During the reporting period, the Consulate investigated a range of charges, including allegations of damage to places of worship, incitement, and allegations concerning access to holy sites. Consulate officers met with representatives of the Bethlehem Christian community and traveled to the area to investigate charges of mistreatment of Christians by the PA. The Consulate raised the issue of seizure of Christian-owned land in discussions with PA officials.

Released on September 14, 2007

- B. Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *International Religious Freedom Report 2006: Israel and the Occupied Territories*, available at <http://www.state.gov/g/drl/rls/irf/2006/71423.htm>.

**International Religious Freedom Report 2006
Released by the Bureau of Democracy, Human Rights, and Labor**

Israel has no constitution; however, the law provides for freedom of worship, and the Government generally respects this right.

There was no change in the status of respect for religious freedom during the reporting period, and government policy continued to contribute to the generally free practice of religion; however, problems continued to exist, stemming primarily from the unequal treatment of religious minorities, and from the state's recognition of only Orthodox Jewish religious authorities in personal and some civil status matters concerning Jews.

Relations among religious groups--between Jews and non-Jews, Muslims and Christians, secular and religious Jews, and among the different streams of Judaism--often were strained. Tensions between Israeli Jews and Arabs increased significantly after the start of the second Intifada (or uprising) in 2000 when the police killed twelve Israeli-Arab demonstrators, prompting a three-year public inquiry and investigation. The Orr Commission of Inquiry established to investigate the killings found certain police officers guilty of wrongdoing, and concluded in 2003 that the "government's handling of the Arab sector has been primarily neglectful and discriminatory," that it "did not show sufficient sensitivity to the needs of the Arab population, and did not take enough action to allocate state resources in an equal manner." The Police Investigation Department (PID) decided in September 2005 not to indict any police officers for the killings. The Government then announced that the Deputy State Attorney would review the PID decision, and has allowed Adalah, an Arab-Israeli advocacy group, to examine the investigation files so that the organization could prepare a summary of its findings for the Deputy State Attorney. Tensions remained high due to institutional, legal, and societal discrimination against the country's Arab citizens.

The U.S. Government discusses religious freedom problems with the Government as part of its overall policy to promote human rights.

Section I. Religious Demography

Based on its pre-1967 borders, the country has an area of approximately 7,685 square miles, and its population is approximately 7 million, of which 5.6 million are Jews (including Jewish settlers who live in the Occupied Territories), approximately 1.3 million are Arabs, and approximately 290,000 are members of other minorities. Although the Government defined nearly 80 percent of the population as Jewish, approximately 306,000 of these citizens did not qualify as Jews according to the Orthodox Jewish definition or the definition used by the Government for civil procedures. According to a government survey conducted in 2004 and published in 2005, approximately 8 percent of the Jewish population were Haredim, or ultra-Orthodox, and another 9 percent were Orthodox, while 39 percent described themselves as

"traditionally observant" or "traditional," and 44 percent described themselves as "secular" Jews, most of whom observed some Jewish traditions. A growing but still small number of traditional and secular Jews associated themselves with the Conservative, Reform, and Reconstructionist streams of Judaism, which are not officially recognized for purposes of civil and personal status matters involving their adherents. Although the Government does not officially recognize them, these streams of Judaism received a small amount of Government funding and were recognized by the country's courts.

Numerous religious groups are represented in the country. Slightly less than twenty percent of the population is non-Jewish and the vast majority of them are ethnically Arab. Of this number, Muslims constitute approximately twelve percent, Christians 3.5 percent, Druze 1.5 percent, and adherents of other religious approximately 0.5 percent. The non-Jewish populations were concentrated in the north, in Bedouin communities in the Negev region in the south, and in the narrow band of Arab villages in the central part of the country adjacent to the Occupied Territories. Relatively small communities of evangelical Christians, Messianic Jews (those who consider themselves Jewish but believe that Jesus Christ is the Messiah), and Jehovah's Witnesses also resided throughout the country. In an April 2005,` media report, a leader of the Jewish Messianic community estimated that the Messianic Jewish population numbers approximately 10,000 persons. Media sources also indicated that the number of Messianic Jews had grown rapidly over the past decade, with many new adherents coming from the Russian immigrant community.

The Government reported that approximately 60,000 to 70,000 legal foreign workers lived in the country, and estimated that another 50,000 to 70,000 illegal foreign workers resided in the country. Two local non-Governmental organizations (NGOs) advocating for workers' rights placed the number of legal foreign workers closer to 100,000, and estimated that another approximately 100,000 illegal foreign workers lived in the country. Most of the foreign workers were Roman Catholic, Orthodox Christian, Buddhist, or Hindu.

The Basic Law on Human Dignity and Liberty describes the country as a "Jewish" and "democratic" state. Most members of the non-Jewish minority were generally free to practice their religions but were subject to various forms of discrimination, some of which have religious dimensions.

Section II. Status of Religious Freedom

Legal/Policy Framework

There is no constitution; however, the law provides for freedom of worship, and the Government generally respected this right in practice. The declaration of independence describes the country as a "Jewish state," but provides for full social and political equality regardless of religious affiliation. While the law explicitly guarantees freedom of religion and the safeguarding of "holy places of all religions," inequities exist. Israeli-Arabs and other non-Jews generally were free to practice their religions; however, discrepancies in treatment existed between Jews and various non-Jewish communities, and between Orthodox Jews and Jews of non-Orthodox affiliations.

The "status quo" agreement reached at the founding of the state, which has been upheld throughout the state's history, guarantees the Government will implement certain policies based on Orthodox Jewish interpretations of religious law. For example, the Government does not recognize Jewish marriages performed in the country unless they are performed by the Orthodox Jewish establishment. The Orthodox Jewish establishment also determines who is buried in Jewish state cemeteries, limiting this right to individuals considered "Jewish" by the Orthodox standards. In addition, the national airline El Al and public buses in every city but Haifa do not operate on Saturday, the Jewish Sabbath; however, several private bus companies do. Additionally, streets in most Orthodox Jewish neighborhoods are closed to vehicles on the Sabbath. According to the Law on Work and Rest Hours of 1951, which was upheld by the Supreme Court in April 2005, Jews in most professions are prohibited from working on the Sabbath unless they are granted a special permit by the Ministry of Trade, Industry, and Employment. According to the Israel Religious Action Center (IRAC), however, the Government often chooses not to enforce the law.

In April 2004, the High Court rejected a petition demanding that the Ministry of the Interior enforce the prohibition on the public display of leavened products for sale during the Passover holiday, but it did not rule on the legality of the prohibition. Then, in March 2005, following the interior minister's announcement that he would not enforce the prohibition, then-Prime Minister Sharon reportedly instructed the minister to enforce the prohibition. In recent practice, however, the Government has not enforced this law, according to IRAC. There were no reports of its enforcement during the reporting period. In regions inhabited primarily by non-Jews, bread was displayed and sold openly during Passover.

In 2003, the High Court suspended several municipal prohibitions and curbs on the sale of pork and instructed municipalities to allow sales of pork in neighborhoods where no more than an unspecified, small portion of the residents would object on religious grounds. The result of the decision was to allow each municipality to determine on its own whether to allow the sale of pork.

The law recognizes as "religious communities" those recognized by and carried over from the British Mandate period (1920-1946), during which Great Britain administered present-day Israel and the Occupied Territories. These include: Eastern Orthodox, Latin (Roman Catholic), Gregorian-Armenian, Armenian-Catholic, Syrian (Catholic), Chaldean (Uniate), Greek Catholic Melkite, Maronite, Syrian Orthodox, and Jewish. Since the founding of the country, the Government has recognized three additional religious communities--the Druze (a monotheistic offshoot of Islam) in 1957, the Evangelical Episcopal Church in 1970, and the Baha'i in 1971. The status of several Christian denominations with representation in the country has been defined by a collection of ad hoc arrangements with various Government agencies. The fact that the Muslim population was not defined as a religious community was a vestige of the Ottoman period, where Islam was the dominant religion, and it does not limit Muslims from practicing their faith. The Government allows members of unrecognized religions the freedom to practice their religion. According to the Government, there were no religious groups awaiting recognition during the reporting period.

With some exceptions, each recognized religious community has legal authority over its members in matters of marriage, divorce, and burial. Legislation enacted in 1961 afforded the Muslim courts exclusive jurisdiction to rule in matters of personal status concerning Muslims. For so-called "unrecognized religions," no local religious tribunals exercised jurisdiction over their members in matters of personal status. In addition, unlike recognized religious communities, unrecognized religious communities do not receive government funding for their religious services. The Arrangements Law provides exemption from municipal taxes for any place of worship of a recognized faith. Exemption from tax payments is also granted to churches that have not been officially recognized by law. In several cases, the Government has interpreted that exemption from municipal taxes to apply only to that portion of the property of religious organizations that was actually used for religious worship. Not-for-profit religious schools also receive tax exemptions. The Lutheran World Federation (LWF) had tax-exemption status for its hospital on the Mount of Olives for more than thirty years until the District Court revoked this privilege in 2002. After several rescheduled hearings, the Supreme Court was scheduled to hear LWF's case for tax exemption on May 22, 2006.

Secular courts have primacy over questions of inheritance, but parties, by mutual agreement, may bring such cases to religious courts. Jewish and Druze families may ask for some family status matters, such as alimony and child custody in divorces, to be adjudicated in civil courts as an alternative to religious courts. Christians may ask that child custody and child support cases be adjudicated in civil courts rather than in religious courts. Muslims have the right to bring matters such as alimony and property division associated with divorce cases to civil courts in family-status matters. However, paternity cases remain under the exclusive jurisdiction of Shari'a courts. There is no overarching law or directive that prescribes these varying approaches.

The Supreme Court ruled in April that rabbinic courts may not arbitrate property disputes between a divorced husband and wife. This ruling has, in effect, repudiated the authority of the rabbinic courts to serve as arbitrators in all financial disputes, even if neither party in the dispute objects to the courts playing this role. Although the rabbinic courts have ruled on financial matters since before the establishment of the state, their jurisdiction has never been established in law. In response to the Supreme Court ruling, the rabbinic courts initiated a Knesset bill to secure in law their jurisdiction over financial matters, which they presented in June to the Justice Ministry for its consideration. In March 2004, the Ministry of Religious Affairs was officially dismantled and its 300 employees were reassigned to several other ministries. As a result, the Ministry of the Interior now has jurisdiction over religious matters concerning non-Jewish groups; the Ministry of Tourism is responsible for the protection and upkeep of all holy sites, and the Prime Minister's office has jurisdiction over the nation's 133 religious councils (one Druze and the rest Jewish) that oversee the provision of religious services to their respective communities. Legislation establishing religious councils does not include non-Jewish religious communities other than the Druze. Instead, the Ministry of the Interior directly funds religious services for recognized non-Jewish communities. The state, through the Prime Minister's office, continues to finance approximately 40 percent of the religious councils' budgets, and local authorities fund the remainder. According to government figures, the 2005 state budget included approximately \$31.5 million (Shekels (NIS) 140,000,000) for religious councils.

According to government budget figures, during 2005 the budget for religious services and religious structures for the Jewish population totaled approximately \$260 million (NIS 1.19 billion). Religious minorities, which comprised approximately 20 percent of the population, received approximately \$13 million (NIS 61 million), or 5 percent of total funding. Of these totals, the Government reported that the 2005 budget for Jewish religious services was approximately \$55.5 million (NIS 250,000,000). The 2005 religious services budget for the non-Jewish communities, including the Druze, totaled approximately \$6.5 million (NIS 29,250,000). At least \$209 million (NIS 960 million), comprising approximately 80 percent of the budget for Jewish religious services and education, went toward Orthodox services, Orthodox rabbis' salaries, and Orthodox educational institutions.

Arab advocacy groups continued to charge that the state did not allocate adequate or proportional funds for the provision of religious services in Arab towns and villages. A reputable representative of the Arab Christian community criticized the Government in April 2005 for not allocating enough funds for Christian institutions. The Government claimed, however, that funding for religious services in Arab communities has been proportional to the percentage of the total population that these communities comprise. The Government did not provide evidence to support its claim.

Under the Law of Return, the Government grants immigration and residence rights to individuals who meet established criteria defining Jewish identity. Included in this definition is a child or grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew, and the spouse of a grandchild of a Jew. A separate, more rigorous standard based on Orthodox Jewish criteria is used to determine the right to full citizenship, entitlement to government financial support for immigrants, the legitimacy of conversions to Judaism performed within the country, and Jewish status for purposes of personal and some civil status problems. Residency rights are not granted to relatives of converts to Judaism, except for children of female converts who are born after the mother's conversion is complete. The Law of Return does not apply to non-Jews or to persons of Jewish descent who have converted to another faith. Approximately 36 percent of the country's Jewish population was born outside of the country.

The Association for Civil Rights in Israel (ACRI) charged that the Ministry of the Interior's Population Registry subjected non-Jewish spouses and non-Jewish adopted children of Jewish immigrants to unfair and at times arbitrary policies for proving the bona fides of their relationship for residency purposes. Most of these cases involved persons who immigrated under the Law of Return from the former Soviet republics and their non-Jewish spouses and non-Jewish adopted children. In August 2004, the minister of the interior acknowledged the problems and took steps to change certain policies. For example, in August 2004, the minister of interior announced that he was canceling his ministry's requirement that immigrants from the former Soviet republics deposit a \$7,000 (30,000-shekel) bank guarantee before allowing their non-Jewish spouses to enter the country. The deposit was to be returned once the spouse was granted residency.

In 2003, the Government began issuing new and replacement identification cards that do not carry a "nationality" (i.e., usually religious) designation. Citizens and residents are still required to register with the Ministry of the Interior's Population Registry as one of a set list of

nationalities. Immediately prior to this reporting period, the Ministry of the Interior issued to individuals arriving in the country immigration forms with an item for travelers to list their religion. Immigration officials were inconsistent in seeking compliance, and the form has since been amended to omit any questions on religious affiliation.

Politicians, media outlets, and many ordinary citizens criticized the Government's practice of granting military draft exemptions and living allowances to full-time yeshiva students. Under the Tal Law, ultra-Orthodox Jews are entitled to exemption from military service to pursue religious studies. This exemption allows ultra-Orthodox Jews to postpone military service in one-year increments to pursue full-time religious studies at recognized yeshivas, or religious schools. These students must renew their deferments each year by proving that they are full-time students. At the age of twenty-two, the yeshiva students are given one year to decide whether to continue to study full time with yearly renewals until they reach the age of forty; to perform community service for one year, and thereafter, twenty-one days each year until the age of forty; or to serve in the army until they finish their military service requirement. According to the Government, approximately 9 percent of all male candidates for military service have deferments as full-time yeshiva students, up from 7.3 percent in 2000.

In July 2005, the justice minister wrote to the prime minister to report that the Tal Law had been implemented "unsatisfactorily, to say the least," and insisted that "an immediate change to the situation is needed." In the three years since the law took effect, between 2002 and 2005, only about 1,100 of the 14,000 yeshiva students with draft deferrals had elected to take a "year of decision," and of those students, only about 30 had actually chosen to perform army service. Only 139 out of 45,639 ultra-Orthodox Jews at the military-conscription age have joined the army since 2002. Officials in both the IDF and the Finance Ministry reportedly opposed the Tal Law for various reasons, and failed to implement it. The only two national service programs designed specifically for the ultra-Orthodox include the Nahal Haredi Unit and the Haredi soldier-teacher program. The Government did not take steps to implement the law or to create new military service options for ultra-Orthodox Jews during the reporting period.

Public Hebrew-speaking secular schools teach mandatory Bible and Jewish history classes. These classes primarily cover Jewish heritage and culture, rather than religious belief. Public schools with predominantly Arab student bodies teach mandatory classes on the Qur'an and the Bible, since both Muslim and Christian Arabs attend these schools. Orthodox Jewish religious schools that are part of the public school system teach mandatory religion classes, as do private ultra-Orthodox schools that receive some state funding.

The Government recognizes the following Jewish holy days as national holidays: Rosh Hashanah, Yom Kippur, Sukkot, Simhat Torah, Passover, and Shavuot. Arab municipalities often recognize Christian and Muslim holidays.

Restrictions on Religious Freedom

Muslim, Christian, and Orthodox Jewish religious authorities have exclusive control over personal status matters, including marriage, divorce, and burial, within their respective communities. The law does not allow civil marriage, and it does not recognize Jewish marriage

performed in the country unless by recognized Orthodox rabbis. Many Jewish citizens objected to such exclusive control by the Orthodox establishment over Jewish marriages and other personal status problems, and to the absence of provision for civil marriage, because approximately 306,000 immigrants from the former Soviet Union were not recognized as Jewish by Orthodox authorities.

The 1967 Protection of Holy Sites Law applies to holy sites of all religions within the country, and the Penal Code makes it a criminal offense to damage any holy site. The Government, however, issued implementing regulations for only Jewish sites. The Government reported in 2006 that there were several hundred official holy sites in 2005--including ten new mosques that were still under construction during the reporting period--without specifying the number of these sites that the law protects. In 2006, the Government did not issue new implementing regulations to protect non-Jewish holy sites under the law, including the ten new mosques under construction.

In November 2004, the Arab Israeli advocacy group Adalah petitioned the High Court to compel the Government to issue regulations to protect Muslim sites, charging that the Government's failure to do so had resulted in desecration and the conversion of several sites into commercial establishments. In its petition, Adalah stated that all of the 120 places designated by the Government as holy sites are Jewish. At the end of the reporting period, the court had not held an initial hearing on the petition. The Government established a committee to examine the issue, but the committee has met only once, according to Adalah. The Government is expected to submit its full response to the petition prior to the initial hearing, scheduled for October 2006. According to Adalah, the Government did not designate any non-Jewish sites as holy sites in either 2005 or 2006, while it has added fifteen Jewish sites since December 2004. The Government did not provide statistics on holy sites.

In December 2004, the Arab Association for Human Rights (AAHR) issued a comprehensive report documenting what it refers to as the "destruction and abuse of Muslim and Christian holy places in Israel." In its report, AAHR asserted that 250 non-Jewish places of worship had either been destroyed during and after the 1948 war or made inaccessible to the local Arab population. Lands of destroyed Arab villages were given to Jewish farmers, and the surviving mosques in these villages had been used as animal pens or storage depots. In Ein Hod, a town south of Haifa, the mosque was turned into a bar. The Government stated that in March 2004, there was a fire in an abandoned mosque in Beit She'an, resulting in a collapse of the structure. The Government reported that the only incident involving damage to a holy site in 2005 occurred in early March, when a couple protesting a family court decision lit firecrackers in the Church of the Annunciation in Nazareth, sparking a riot among church members.

During Jewish holidays and following terrorist attacks, the Government imposed closures to restrict travel in the country and the Occupied Territories for security purposes that had the effect of impeding access to holy sites in the country for Arab Muslims and Christians, as well as Israeli-Arabs and Palestinians who possessed Jerusalem identification cards. The construction of the separation barrier also impeded access to holy sites throughout the country and the Occupied Territories during the reporting period.

The Government permits religious organizations to apply for state funding to maintain or build religious facilities. Funding was provided for the maintenance of facilities such as churches, Orthodox synagogues, mosques, and cemeteries. Funding for construction was not provided for non-Orthodox synagogues. Several civil rights NGOs asserted that Orthodox Jewish facilities receive significantly greater proportions of funding than did non-Orthodox Jewish and non-Jewish facilities. Muslim groups complained that the Government did not equitably fund the construction and maintenance of mosques in comparison to the funding of synagogues.

AAHR reported that the Government was reluctant to refurbish mosques in areas where there was no longer a Muslim population, and has never in its history budgeted for the building of a new mosque. Muslim clerics, judges, and political leaders cited a lack of government funding for, maintenance of, and access to mosques in, among other places, Tiberias, Safed, Beersheva, and Caesaria; the Government kept several of these mosques closed during the year, reportedly for the mosques' protection, and allowed private citizens or municipalities to turn several into galleries, restaurants, and museums. The Government stated that the AAHR report referred to abandoned sites and not to active sites, and the abandoned sites were not properly maintained. There is no restriction on the construction of new mosques, but the Government noted that, while the state budget does not cover the costs of new construction, it does provide assistance in the maintenance of mosques. The Government cited examples of mosques that received government assistance for their maintenance in 2004, including mosques in Romana, Bartaa, Baana, Daburiya, Bir al Maksur, Bustan Almarge, Maala Iron, Hualad, and Hura, which altogether received approximately \$313,000 (NIS 1,420,000). The Government's total development budget for cemeteries was approximately \$6.75 million (NIS 30 million) in 2005. According to government figures, the development budget in 2005 for holy sites and cemeteries for non-Jewish denominations was \$2.22 million (NIS 10 million).

Muslim residents of the Be'er Sheva area, including members of Bedouin tribes, protested the municipality's intention to reopen the city's old mosque as a museum rather than as a mosque for the area's Muslim residents. The High Court rejected a petition from Adalah, representing the area's Muslim community, to enjoin the municipality from renovating the mosque into a museum. The petitioners argued that there were no alternative mosques in the Be'er Sheva area. In January 2005, the High Court issued an interim opinion suggesting that the mosque be used as an Islamic cultural and social center by the Muslim community of Be'er Sheva, but not for prayer. In February 2005, the municipality issued a response rejecting this suggestion, insisting that the mosque be opened as a museum. According to Adalah, the attorney general originally submitted a response to the High Court supporting the Be'er Sheva Municipality's position that the building not be used as an Islamic Cultural Center, but in April 2006 the attorney general announced that the Government preferred to reopen the mosque as a museum for Islamic and eastern culture. The case was pending at the end of the reporting period.

Building codes for places of worship are enforced selectively based on religion. Several Bedouin living in unrecognized villages were denied building permits for construction of mosques, and in the past, the Government has destroyed mosques built in unrecognized Bedouin communities. In 2003, government officials demolished a mosque that was constructed without a permit and served approximately 1,500 residents in the unrecognized Bedouin village of Tel al-Maleh. According to the Regional Council for the Arab Unrecognized Villages in the Negev, in 2003

and 2004, the Government issued demolition orders for three mosques in Um al-Hiran, al-Dhiyya, and Tel al-Maleh respectively; all three were unrecognized Bedouin villages in the Negev and built without the proper permits. The Regional Planning and Building Committee in the Negev stated that it was unaware that the building marked for demolition in al-Dhiyya was a mosque. By the end of the reporting period, the demolition orders continued to stand. The Tel al-Maleh case was transferred to a lower court for review and the case was pending at the end of the rating period. In 2003 in Um al-Hiran, the Government issued orders to demolish the mosque, and villagers were fined approximately \$7,000 (NIS 30,000) for building the structure without a permit. Earlier this year, following a failed appeal by the village, the Magistrate' Court ordered the mosque to be destroyed. It was not known at the end of the period covered by this report whether the mosque was demolished.

Adalah reported that, in March 2005, the state requested a demolition order for a mosque in Husseiniya. The case was still pending at the end of the reporting period. According to the Regional Council for the Arab Unrecognized Villages in the Negev, the Government did not destroy any mosques during the reporting period. In contrast, according to a former Tel Aviv municipal council member, in recent years approximately 100 illegal synagogues have operated in Tel Aviv, some within apartment buildings and others in separate structures.

A 1977 anti-proselytizing law prohibits any person from offering or receiving material benefits as an inducement to conversion. No reports existed of attempts to enforce the law during the reporting period.

Missionaries are allowed to proselytize, although the Church of Jesus Christ of Latter-day Saints (Mormons) voluntarily refrained from proselytizing under a signed agreement with the Government.

By the end of the period covered by this report, the Knesset had not ratified the Fundamental Agreement establishing relations between the Holy See and the Government that was negotiated in the 1990s. In a separate process, representatives of the Government and the Holy See held several negotiating sessions since September 2004 with the aim of reaching an agreement (concordat) on fiscal and legal matters. The negotiations addressed the problems of tax exemption of Roman Catholic institutions and property and the access of the Roman Catholic Church to courts. No agreement had been reached by the end of the period covered by this report.

Since the Government does not have diplomatic relations with Saudi Arabia, Muslim citizens must travel through another country, usually Jordan, to obtain travel documents for the Hajj. The average number of Hajj pilgrims traveling from the country each year was approximately 4,500, and the overall number allowed to participate in the Hajj was determined by Saudi Arabian authorities. According to the Government, travel to hostile countries, including travel to Saudi Arabia for the Hajj, may be restricted; however, these restrictions are based on security concerns rather than on any religious or ethnic factors.

During the reporting period, many groups and individuals of numerous religions traveled to the country freely. Members of the Messianic Jewish community, however, charged that during the

year, government officials detained and denied entry to several of their members who were seeking to enter the country. There were no new instances during the reporting period.

According to representatives of Christian institutions, the process of visa issuance for Christian religious workers significantly improved after a period in 2003 when the Government refused to grant residence visas to approximately 130 Catholic clergy assigned to the country's and the Occupied Territories. The Ministry of the Interior's Christian Department reported that it approved most of the applications made by clergy during the reporting period. The Department did not stipulate how many it received.

The Government discriminated against non-Jewish citizens and residents, the vast majority of whom were Arab Muslims and Christians, in the areas of employment, education, and housing. The Orr Legal Commission of Inquiry, established to investigate the 2000 police killing of twelve Israeli-Arab demonstrators, issued a final report in 2003 noting historical, societal, and governmental discrimination against Arab citizens. The Government has not implemented either the Orr Commission recommendations or those of a follow-up inter-ministerial committee.

According to a March 2005 media report, approximately 8,000 non-Jewish soldiers were serving in the IDF. The IDF policy is to allow non-Jewish soldiers to go on home leave for their respective religious holidays. Military duties permitting, Jewish soldiers can leave on holidays. These duties rotate to allow some soldiers to go home for Jewish holidays. The IDF conducts commemorative activities appropriate for each respective Jewish holiday.

The IDF did not have any Muslim or Christian chaplains because, according to government sources, the frequent home leave accorded all soldiers allowed Muslim and Christian soldiers easy and regular access to their respective clergy and religious services at home. There were discussions between the IDF and the National Security Council regarding chaplain appointments for non-Jewish IDF soldiers, but no decision had been made by the end of the period covered by this report.

The Government used private non-Jewish clergy as chaplains at military burials when a non-Muslim or non-Jewish soldier died in service. The Interior Ministry reported that it provided imams to conduct funerals according to Muslim customs. In 2003, however, according to the family of a Christian soldier killed in a terrorist attack, the IDF did not have a military priest available to officiate at their son's burial. The soldier was buried in a non-Jewish section of the military cemetery in a non-religious ceremony without a religious figure to officiate. All Jewish chaplains in the IDF are Orthodox.

The IDF sponsored Orthodox Jewish conversion courses for Jewish soldiers who do not belong to Orthodox Judaism and for non-Jewish soldiers seeking to convert to Judaism. The IDF does not facilitate conversion to other religions.

Military service is compulsory for Jews and Druze. Orthodox Jews could obtain exemptions from service for full-time religious study. Some Arab citizens, mainly Bedouin, were accepted as volunteers. Approximately 90 percent of Israeli-Arabs do not serve in the army. Israeli-Arab advocacy groups charged that housing, educational, and other benefits, as well as employment

preferences based on military experience, effectively discriminate in favor of the Jewish population, the majority of whom serve in the military. In December 2004, the Ivri Committee on National Service recommended to the Government that Israeli-Arabs be afforded an opportunity to perform alternative nonmilitary service. By the end of the reporting period, the Government had not yet considered these recommendations.

In 2003, the Government introduced a core curriculum program that required all state-funded schools to teach core subjects, such as mathematics. However, state-subsidized ultra-Orthodox Jewish religious schools were not compelled, as were other types of schools, to comply with this law. The High Court ruled in December 2004 that ultra-Orthodox Jewish religious schools that did not comply with the Education Ministry's core curriculum by the opening of the 2007 school year would not be eligible for any funding from the ministry. The ruling was a response to a petition filed by the Secondary Schools Teachers' Association against the Ministry of Education charging that while the ministry cut funding to the public school system, causing hundreds of teachers to lose their jobs, it provided approximately \$40 million to autonomous ultra-Orthodox schools that did not comply with ministry pedagogical requirements. In April 2006, the Education Ministry reported that all of the "recognized but unofficial" education facilities affiliated with ultra-Orthodox parties were now "fully implementing the core curriculum program." It is unclear whether these institutions will continue to implement the core curriculum because Prime Minister Olmert reportedly promised the ultra-religious Shas party in April that his cabinet would pass a new law to "permit all Haredi education institutions to continue to carry out the education and study programs unique to them."

Government resources available for religious/heritage studies to Arab and to non-Orthodox Jewish public schools were proportionately less than those available to Orthodox Jewish public schools. According to IRAC, approximately 96 percent of all state funds for Jewish religious education were allocated exclusively to Orthodox or ultra-Orthodox Jewish schools. Both public and private Arab schools offer studies in both Islam and Christianity, but the state funding for such studies was proportionately less than the funding for religious education courses in Jewish Orthodox schools.

The Government funded secular schools and Orthodox Jewish schools; it did not fully fund religious schools for non-Jews. Schools that seek to adopt a non-Jewish, religious curriculum must operate outside of the regular public schools system. Quality private religious schools for Israeli-Arabs existed; however, parents often must pay tuition for their children to attend such schools since little government funding was available. Jewish private religious schools, however, received significant government funding in addition to philanthropic contributions from within the country and abroad, which effectively lowers the schools' tuition costs.

Government funding to the different religious sectors was disproportionate to the sectors' sizes. Civil rights NGOs charged that the Government favored Orthodox Jewish institutions in the allocation of state resources for religious activities.

IRAC noted that approximately 97 percent of public funding for Jewish cultural and educational activities went to Orthodox Jewish organizations, despite IRAC's estimate that non-Orthodox Jewish institutions accounted for only approximately 20 percent of all Jewish cultural activities.

In response to a petition filed by IRAC in 2002, the Supreme Court ruled in December 2004 that the Government must create new criteria for state funding of Jewish cultural activities. Accordingly, the Government issued new criteria for its funding of educational and cultural activities. The educational criteria, however, still discriminated against the secular sector, according to IRAC, which planned to petition the Supreme Court again. IRAC expressed satisfaction with the Government's new criteria for funding cultural activities, though it remained concerned that the criteria could be discriminatory in implementation.

In spite of the legal provision for public funding to build non-Orthodox synagogues, the Government did not fund the construction of any non-Orthodox synagogues. In 2003, IRAC petitioned the High Court on behalf of a Reform congregation in Modi'in to require that Modi'in municipality fund construction of a Reform synagogue. The city already funded eight Orthodox synagogues, but none of the Conservative or Reform synagogues. The High Court ruled in 2003 that it was permissible to use state funds for the construction of a Reform synagogue in the city of Modi'in and ordered the municipality to repeat the process for determining which congregations would receive funding and to use criteria that would guarantee and provide equal treatment. Nevertheless, the request for funding stalled in the Modi'in municipality. IRAC again petitioned the High Court to compel the municipality to hold a hearing to consider all available budget requests for synagogue construction in light of the needs of Modi'in residents. IRAC also petitioned the court to freeze all municipal allocations for synagogue construction in Modi'in until such a hearing was held. In 2005, The Government announced that it would build synagogues for non-Orthodox denominations, but the Government had not allocated any such funding by the end of the reporting period.

In 1998, the High Court of Justice ruled that discrepancies in budget allocations between religious institutions in the Jewish and non-Jewish sectors constituted prima facie evidence of discrimination. In 2000 the plaintiffs from the 1998 High Court case brought a case contending discrimination in the allocation of resources for religious cemeteries. The High Court agreed with the plaintiffs that non-Jewish religious cemeteries were receiving inadequate resources and ordered the Government to increase funding to such cemeteries.

The 1996 Alternative Burial Law established the right of any individual to be buried in a civil ceremony and required the establishment of twenty-one public civil cemeteries throughout the country. However, at the end of the reporting period, only one public civil cemetery existed in the country, in Be'er Sheva, and only approximately fifteen Jewish cemeteries in the country contained a section for civil burials. The City of Jerusalem reportedly planned to establish a cemetery for use by secular citizens free of charge. If completed, this cemetery would be the first public civil cemetery endorsed by a municipal government in the country.

Several domestic civil rights and immigrant groups asserted that the Government failed to allocate adequate space or sufficient funds for the establishment of civil cemeteries. Civil burials were also offered by certain Kibbutzim, but, according to some NGOs, such burials were expensive. The Government reported that the 2004 capital budget for civil cemeteries was approximately \$760,000. It reported that in 2004, the administrative budget for Jewish cemeteries was approximately \$2 million, and claimed that no capital budget was allocated. In

2005, the budget for Jewish burials was approximately (NIS 17 million), while the budget for civilian burials was (NIS 11.5 million).

Only approximately 7 percent of land was privately held, according to Adalah. Most citizens who controlled land, either for residential or business use, including farms, leased their land from the Government on long-term leases. Of the 93 percent of the land not in private hands, the Government directly controlled the vast bulk, but approximately 12.5 percent was owned by the state through the quasi-public Jewish National Fund (JNF). The Israel Land Administration, a government agency, manages both the land directly owned by the Government and the JNF land. The JNF's charter prohibited it from leasing land to non-Jews. In addition, the Jewish Agency, an organization that promotes Jewish immigration to the country and develops residential areas on both public and JNF land, as a matter of policy does not lease land to non-Jews. In 2000, the High Court ruled that the state may not allocate land to its citizens on the basis of religion or nationality, even if it allocates the land through a third party such as the Jewish Agency. The Court's decision precludes any restrictions on the leasing or sale of land based on nationality, religion, or any other discriminatory category. JNF complied with the ruling by publishing announcements about land sales in publications available to both Jews and non-Jews, but it remained unclear whether or not non-Jewish citizens would actually be able to purchase the advertised properties.

In October 2004, civil rights groups petitioned the High Court of Justice to block a government bid announcement involving JNF land that effectively banned Arabs from bidding. The Government then halted marketing of JNF land in the Galilee and other areas of the north, where there are large Arab populations. In December 2004, Adalah petitioned the High Court to require the Government to apply nondiscriminatory procedures for allocating land and to conduct open land sales or leases to Arabs as well as to Jews. In January 2005, the attorney general ruled that the Government would not discriminate against Israeli-Arabs in the marketing and allocation of lands it manages, including lands that the Israel Land Administration manages for the Jewish National Fund. Adalah criticized the attorney general, however, for also deciding that the Government should compensate the JNF with land equal in size to any plots of JNF land won by non-Jewish citizens in government tenders.

Exclusive control over marriages resides by law with recognized bodies of the recognized religious denominations. Accordingly, anyone wishing to marry in a secular ceremony, Jews wishing to marry in non-Orthodox religious ceremonies, Jews not officially recognized as Jewish by the Orthodox Jewish establishment but wishing to marry in Jewish ceremonies, and Jews wishing to marry someone of another faith must all do so abroad. The Ministry of the Interior recognizes such marriages. During the reporting period, approximately 250,000 citizens could not marry because they lacked religious affiliation. According to Central Bureau of Statistics, between 2000 and 2004, 32,009 citizens married outside of the country. Almost half of this number--14,214--comprised couples in which both the husband and the wife were Jewish. A smaller proportion of this number--1,764--lacked religious affiliation in the country. Between 2000 and 2003, five percent of Jewish couples that qualified to be married by the Chief Rabbinate decided to marry abroad instead. Others decided instead to hold weddings unrecognized by the Government, including Reform and Conservative weddings and those conducted by Kibbutz authorities.

In March 2004, the Knesset (parliament) rejected two bills that would have allowed for civil marriage. In July 2004, the chairman of a Knesset committee established to formulate a civil marriage option announced that the committee would not complete its work or issue recommendations due to what was characterized as political interference with the committee's work. In April 2005, the High Court instructed the Government to inform the Court within three months of the government's position on whether to recognize so-called "consular marriages," those conducted by officials of foreign embassies in the country. Government recognition of consular marriages would enable couples with no religious affiliation, or those of a religion not recognized by the Government, to wed in such civil ceremonies. Consular weddings have not been performed since 1995, when the Foreign Ministry issued a memorandum to foreign embassies instructing them to cease performing consular marriages. According to press reports, the High Court was expected to consider two petitions demanding that the Interior Ministry recognize consular marriages in 2006.

In December 2004, the Government reached an agreement with the Chief Rabbinate to limit required prenuptial instruction to those Jewish religious laws that were directly connected to the marriage ceremony and not require Jewish couples to receive instruction on Orthodox Jewish laws of ritual purity.

The state does not recognize conversions to Judaism performed in the country by non-Orthodox rabbis. In March 2005, the High Court ruled that, for the purpose of conferring citizenship rights, the Government must recognize those non-Orthodox conversions of non-citizen legal residents that were begun in the country but formalized abroad by acknowledged Jewish religious authorities, even if not of the Orthodox strain. In a separate May 2004 ruling, the court determined that non-Jews who move to the country and then convert in the country through an Orthodox conversion were eligible to become immigrants and citizens pursuant to the Law of Return. Previously, non-Jews were entitled to immigrate to the country and obtain full citizenship only if these conversions were conducted entirely abroad and under Orthodox standards. The High Court did not, however, rule on whether the Government must recognize non-Orthodox conversions formalized in the country.

Separately, in May 2006 the Chief Rabbinate announced that it decided two years ago to not automatically recognize conversions performed by Orthodox rabbis abroad, citing the need for consistency of standards in the conversion process.

The Shinui Party, which ran in the 2002 national elections on a platform of ending the exclusive power of the Orthodox establishment over such problems as marriage and citizenship, left then-Prime Minister Sharon's governing coalition in December 2004 in protest over the allocation of approximately \$70 million in the 2005 budget for ultra-Orthodox religious institutions. Then-Prime Minister Sharon allocated the funds as part of a coalition agreement with the ultra-Orthodox United Torah Judaism party to secure that party's support for the Gaza disengagement plan.

Under the Jewish religious courts' interpretation of personal status law, a Jewish woman may not receive a final writ of divorce without her husband's consent. Consequently, thousands of

women, so-called "agunot," are unable to remarry or have legitimate children because their husbands have either disappeared or refused to grant divorces.

Rabbinical tribunals have the authority to impose sanctions on husbands who refuse to divorce their wives or on wives who refuse to accept divorce from their husbands. In May 2004, a rabbinical court decided for the first time to jail a woman who refused to accept a divorce from her husband. Rabbinical courts also could exercise jurisdiction over, and issue sanctions against, non-Israeli Jews present in the country. The rabbinical courts administration asked U.S. authorities in mid-February 2006 to extradite husbands who fled to the United States to avoid granting their wives a religious divorce decree.

Some Islamic law courts have held that Muslim women could not request a divorce but could be forced to consent if a divorce was granted to the husband. One Arab Muslim woman who won a divorce from her abusive husband in a Muslim court subsequently filed a civil suit against the husband with the Magistrates Court in the north. The court set a precedent in March 2005 by awarding the woman approximately \$10,000 in compensation for damage to her status and chances of re-marrying. Divorced Arab women were stigmatized in their communities and experienced difficulties remarrying.

Members of unrecognized religious groups, particularly evangelical Christians, sometimes faced problems in obtaining marriage certifications or burial services that were similar to the problems faced by Jews who were not considered Jewish by the Orthodox establishment. Informal arrangements with other recognized religious groups provided relief in some cases.

Most Orthodox Jews believed that mixed gender prayer services violate the precepts of Judaism. As a result, such services were prohibited at the Western Wall, the holiest site in Judaism, and men and women must use separate areas to visit the Western Wall. Women also were not allowed to conduct any prayers at the Western Wall wearing prayer shawls, which were typically worn by men, and cannot read from Torah scrolls. In 2003, the Women of the Wall, a group of more than 100 Orthodox, Conservative, and Reform women, lost their fourteen-year legal battle to hold formal women's prayer services at the Western Wall. The High Court ruled that the group could not hold prayer services at the Western Wall and instead would be permitted to hold them at nearby Robinson's Arch, part of an archeological site. The court ordered the Government to prepare an area at Robinson's Arch where women could read aloud from the Bible and conduct group prayers, and the Government inaugurated a plaza in this area for women's services in August 2004. The mayor of Jerusalem, Uir Lupolianski, requested permission to expand the women's section and make its size equal to that of the men's section, by changing the route of the "Mugraby Path" leading to the Temple Mount.

Another religious group, the Masorti movement, regularly held prayer services at Robinson's Arch according to its own customs, which include men and women praying together, women reading from the Torah, and women wearing a tallit or tefillin. However, they could pray only between seven and eight in the morning without paying. If the members of the Masorti movement wanted to pray after this time, they had to pay the approximately \$6 fee charged to visit the archeological site. In April 2006, the Masorti movement petitioned the High Court regarding the fee.

Non-Orthodox Jews faced greater difficulties than Orthodox Jews in adopting children. In December 2004, in response to a petition from IRAC, the High Court ordered the Government to justify the practice under which the Adoption Service of the social affairs ministry that placed non-Jewish children only in Orthodox Jewish homes. The Government did not respond by the end of the reporting period. Existing law requires that the adopted child must be of the same religion as the adopting parents. However, Representatives of IRAC reported that when no family of the same religion was willing to adopt the child, adoption officials consistently placed the child with an Orthodox family. In such cases, the child's conversion to Judaism had to be completed before the adoption was finalized. The Government defended its practice by arguing that the placement of non-Jewish children in Orthodox homes eliminated any subsequent legal uncertainty about the Jewish status of the children. At the end of the reporting period, the case was still pending.

The Los Angeles-based Simon Wiesenthal Center began construction in 2004 of a \$150 million Center for Human Dignity and Museum of Tolerance in Jerusalem. The Wiesenthal Center began building on the site of a municipal parking lot, which local officials had built in the 1960s over part of a centuries-old Muslim cemetery. Supporters of the Wiesenthal Center cited an 1894 ruling by the Shari'a court at the time, which stated that because the cemetery was abandoned, it was no longer sacred. During the reporting period, builders unearthed hundreds of skeletons and skeletal remains. After several Muslim organizations petitioned the High Court to stop construction, the court ordered the sides to arbitration and issued an injunction stopping construction work. The museum was reportedly considering a plan to relocate the Muslim graves.

There were no reports of religious prisoners or detainees in the country.

Forced Religious Conversion

There were no reports of forced religious conversion, including of U.S. citizens minors who had been abducted or illegally removed from the United States, or of the refusal to allow such citizens to be returned to the United States.

Persecution by Terrorist Organizations

During the reporting period, terrorist organizations, including Palestinian Islamic Jihad and Al Aqsa Martyrs Brigades, carried out several attacks. While terrorists launched these attacks largely as political statements, they sometimes accompanied the attacks with anti-Semitic rhetoric.

Improvements in Respect for Religious Freedom

The Government appointed Oscar Abu-Razek, a Muslim Israeli-Arab, as director general of the Ministry of Interior, the first Arab to serve in such a senior position in a government ministry. In addition, for the first time since the establishment of the state, an Arab was appointed in 2004 as a permanent justice of the High Court.

According to government data, the number of non-Jewish directors on the boards of state-owned companies increased from 5.5 percent in 2002 to 8 percent in 2005. Former Prime Minister Sharon stated publicly that increasing the number of non-Jewish board directors and the number of non-Jewish civil service employees is a government priority.

Members of the Knesset and the Chief Rabbinate attended a seminar in January 2005, hosted by the American Jewish Committee, to increase understanding of the various branches of Christianity. To enhance interfaith relations, seminar participants also visited the heads of various Christian subgroups, including the Latin and Armenian patriarchs and a representative of the Greek Orthodox Patriarchate.

In June 2006, The 35th World Zionist Congress passed a resolution obligating the Jewish Agency to include Israeli-Arab communities in its development plans for the country. The agency has never been active before in the Arab and Druze communities. The resolution's proponents succeeded through a rare collaborative effort between Reform and Orthodox groups, who combined to overcome the opposition of delegates from some political parties, including Kadima, Herut and Yisrael Beiteinu.

The Government established a new department in the Ministry of Foreign Affairs to fight anti-Semitism and commemorate the Holocaust.

Section III. Societal Abuses and Discrimination

Relations among different religious groups--between Jews and non-Jews, between Christians and Muslims, between Christians of different traditions, and among the different streams of Judaism--often were strained. Tensions between Jews and non-Jews were the result of historical grievances as well as cultural and religious differences, and they were compounded by governmental and societal discrimination against Israeli-Arabs, both Muslim and Christian. These tensions were heightened by the Arab-Israeli conflict, and manifested in terrorist attacks targeting citizens, IDF operations in the Occupied Territories, incidents of Jewish militants targeting Israeli-Arabs, and incidents of Israeli-Arab involvement in terrorist activity.

On July 7, 2005, the Messianic congregation in Arad published a letter in Iton HaTzvi that reported harassment by members of the local ultra-Orthodox community. The High Court heard on September 12, 2005, a petition by ultra-Orthodox Jews seeking both the right to demonstrate at the house of a family of Messianic Jews and reversal of a police decision prohibiting such a demonstration. The court had not issued a ruling by the end of the reporting period. According to Messianic Jews resident in Arad, since April 2004 members of the Gur Hassidim movement have demonstrated regularly in front of the homes of Christians and Messianic Jews in Arad to protest alleged proselytizing by these groups.

An observer reported that a group of approximately 200 ultra-Orthodox Jews violently disrupted the religious service of a Messianic congregation in Be'er Sheva on December 24, 2005. According to the account, the group pushed and slapped the congregation's pastor and damaged property. Police dispersed the mob. On December 26, 2005, the observer filed a report with the Be'er Sheva police.

Members of the Messianic Jewish community in Arad reported suffering verbal harassment and physical violence at the hands of ultra-Orthodox Jews. During the reporting period, authorities and public officials did not respond effectively to protect this community.

According to a 2006 poll conducted by the Israel Democracy Institute, some 62 percent of the citizens believed that the Government should encourage Arab citizens to emigrate. Only 14 percent of respondents thought relations between Jews and Arabs were good in the country. An ultra-Orthodox weekly, *Sh'a Tova*, carried a comic strip in March 2005 for children with a negative depiction of Arabs, including the statement, "Yes, a good Arab is a dead Arab." In 2005, fans of a Jerusalem soccer team shouted racist slogans against Israeli-Arab soccer players during a match. In 2004, several Jews were indicted in one incident for shouting such slogans.

Two individuals wrapped a pig's head with a keffiyeh with the word "Mohammad" written on it and threw it into the courtyard of the Hassan Bek mosque in Jaffa on August 19, 2005. Police later arrested and charged the individuals with religious insult, but released them in September after a judge ruled that there was no risk that the individuals would repeat the act.

In March, the state prosecutor initiated a formal investigation of Rabbi David Batzri and his son, Rabbi Yitzhak Batzri, for suspected incitement to racism. The rabbis organized a conference in January to rally opposition to the proposed expansion of a bilingual school in Jerusalem that includes both Arab and Jewish students. Rabbi David Batzri stated at the conference, "The people of Israel are pure and Arabs are a nation of asses. The question must be asked, why didn't God give them four legs, because they are asses? " His son, Rabbi Yitzhak Batzri, added, "People say we are racist, but they are the evil ones, the cruel ones, the scum of snakes. This is war."

During the reporting period, incidents occurred in Jerusalem in which ultra-Orthodox Jewish youths assaulted Arabs and spray-painted anti-Arab graffiti.

During the run-up to the parliamentary elections in March, the Herut party used campaign posters depicting an Arab woman wrapped in a traditional veil with the caption "this demographic will poison us." In April Attorney General Menachem Mazuz ordered a criminal investigation into the incident.

The phrases "Death to Arabs" and "Death to Gentiles" were spray-painted in March 2005 on ten graves in a Christian cemetery in Jerusalem's Gilo neighborhood. Police continued to investigate the matter, but had not made any arrests by the end of the reporting period. Adalah and AADR reported that the police have still not made any arrests. Similarly, in May 2006, Israeli youths celebrating the holiday of Lag Ba'Omer, a day traditionally marked by the lighting of bonfires, allegedly attempted to set fire to an abandoned mosque in the northern city of Acre. The individuals claimed they were simply preparing to light a bonfire, but police found indications of attempted arson.

Former Prime Minister Sharon's controversial withdrawal of all citizens from the Gaza Strip and four settlements in the northern West Bank caused tensions in society between supporters and opponents of the withdrawal, the latter often being members of religious Zionist groups. Prior to

disengagement, a rabbi issued a religious edict permitting settlers to physically harm Bedouin and Druze soldiers who participated in the evacuation of settlements pursuant to Sharon's plan. In response to the edict, a Bedouin Sheikh urged Bedouin soldiers to respond forcefully, including with live fire, to any settler attacks against them during the evacuation.

Death threats in various forms, including graffiti, were made against government officials who supported the disengagement plan, including against Prime Minister Sharon. During a March 2005 sermon, Shas party spiritual leader Rabbi Ovadia Yosef suggested that God would see that Sharon dies for implementing disengagement. The national office of the Anti-Defamation League (ADL) issued a public statement condemning Yosef's sermon for its inflammatory language and his subsequent apology as inadequate. As part of his opposition to the disengagement plan, right-wing activist Noam Federman passed out flyers inciting violence and terror and made statements on his weekly radio show such as, " Let's get rid of the Arabs. They have twenty-two other countries. Let's take them there. " In March 2006, the Jerusalem prosecutor's office indicted Federman on twenty-five charges related to these actions.

In May 2006, Vandals spray painted approximately twenty swastikas on the ark, Torah scroll and walls of the great synagogue in the city of Petah Tikva. Neo-Nazi graffiti was also sprayed on monuments honoring, and actual gravesites of, several well-known historical figures, including the grave of the country's first Prime Minister, David Ben-Gurion. In May 2005, swastikas and graffiti comparing Prime Minister Sharon to Adolf Hitler were sprayed on the road leading into the Yad Vashem Holocaust Museum in Jerusalem. A reputable Jewish organization attributed these acts to extremist opponents of Prime Minister Sharon's disengagement plan. In April 2005, police discovered two fake bombs in Jerusalem and arrested two far-right Jewish religious activists for planting those bombs and others in their efforts to distract government attention from the disengagement plan.

In February 2005, Druze rioters damaged a Melkite Catholic church and damaged or burned dozens of Christian-owned businesses, homes, and cars in the northern village of Mugar after a Druze falsely claimed that Christian youths had placed pornographic pictures of Druze girls on the Internet. Eight persons were reported injured, and many Christians fled the city and refused to allow their children to return to school for weeks in the aftermath of the violence. Druze religious leaders were quick to denounce the riots, and representatives of the Christian community criticized the Government for not responding more quickly to the violence. In June 2005, the Government announced the allocation of \$2 million (NIS 10 million) in state funds to compensate residents for property damage incurred during the riots.

Numerous NGOs in the country were dedicated to promoting Jewish-Arab coexistence and interfaith understanding. Their programs included events to increase productive contact between religious groups and to promote Jewish-Arab dialogue and cooperation. These groups and their events have had varying degrees of success. Interfaith dialogue often was linked to the peace process between Israelis and Palestinians and between the country and its Arab neighbors. Among efforts in this area were those of participants in the Alexandria Interfaith Peace Process, initiated at a 2002 interfaith conference in Cairo. Canon Andrew White, the Archbishop of Canterbury's special representative to the Alexandria Process, convened meetings in December 2004 and in January 2005 in Jerusalem with Israeli and Palestinian religious leaders to discuss

advancing the Alexandria Process. The group discussed ways to advance an agenda of peace among religious leaders in their respective communities. In January 2005, as part of the Alexandria Process, Israeli rabbis and Israeli and Palestinian imams joined a group of more than 100 imams and rabbis from all over the world in a Brussels conference aimed at enhancing interfaith understanding and combating violence.

Animosity between secular and religious Jews continued during the period covered by this report. Non-Orthodox Jews have complained of discrimination and intolerance by members of ultra-Orthodox Jewish groups. Persons who consider themselves Jewish but who are not considered Jewish under Orthodox law particularly complained of discrimination. As in past years, ultra-Orthodox Jews in Jerusalem threw rocks at passing motorists driving on the Sabbath.

A variety of NGOs existed that sought to build understanding and create dialogue between religious groups and between religious and secular Jewish communities. Several examples were the Geshar Foundation (Hebrew for "bridge"); Meitarim, which operates a pluralistic Jewish-oriented school system; and the Interreligious Coordinating Council in the country, which promoted interfaith dialogue among Jewish, Muslim, and Christian institutions.

Throughout society, attitudes toward missionary activities and conversion generally were negative. Many Jews were opposed to missionary activity directed at Jews, and some were hostile toward Jewish converts to Christianity. Media sources reported that the Messianic Jewish community accused Yad L'achim, a Jewish religious organization opposed to missionary activity, of harassing its members. Christian and Muslim Israeli-Arab religious leaders complain that missionary activity that leads to conversions frequently disrupts family coherence in their communities.

A March 2005 dispute over the sale of property in Jerusalem's Old City owned by the Greek Orthodox Church to Jewish investors led a Holy Synod meeting in Istanbul to depose the Patriarch of Jerusalem, Irineos I, in May 2005. While Greece, Jordan, and the Palestinian Authority recognized the ousting of Irineos and the appointment of Theophilus III as his successor, the Government did not. In November 2005, Theophilus appealed this issue to the High Court and at the same time a ministerial committee was established to deal with the situation. The committee did not resolve the issue and the court recommended waiting for the establishment of the next Government and a new ministerial committee before resolving the matter.

Section IV. U.S. Government Policy

The U.S. government discusses religious freedom problems with the Government as part of its overall policy to promote human rights. The U.S. embassy consistently raised problems of religious freedom with the Foreign Ministry, the police, the prime minister's office, and other government agencies.

Embassy representatives, including the ambassador, routinely meet with religious officials. These contacts include meetings with Jewish, Christian, Muslim, and Druze leaders at a variety of levels. In April 2005, the embassy invited two Knesset members from the secular Shinui party

and two from the ultra-Orthodox Shas party to participate together in an International Visitors Program on the U.S. legislative, judicial, and executive branches of Government. The program received positive media coverage for enhancing understanding and ties between these two rival parties.

Embassy officials maintain a dialogue with NGOs that follow human and civil rights problems, including religious freedom. Embassy representatives also attended and spoke at meetings of such organizations, including the Arab Association for Human Rights, the Mossawa Advocacy Center for Arab Citizens in Israel, the Association for Civil Rights in Israel, the Israel Religious Action Center, and Adalah.

THE OCCUPIED TERRITORIES (INCLUDING AREAS SUBJECT TO THE JURISDICTION OF THE PALESTINIAN AUTHORITY)

The Palestinian Authority (PA) does not have a ratified constitution; however, the Palestinian Basic Law provides for freedom of religion, and the PA generally respected this right in practice. The Basic Law names Islam as the official religion but also calls for "respect and sanctity" for other religious groups.

There was no change in the status of the PA's respect for religious freedom during the reporting period. Hamas candidates won 74 of 132 seats in the Palestinian Legislative Council during elections on January 25, 2006. A new PA government led by Hamas Prime Minister Isma'il Haniyyah was sworn-in by PA President Mahmud Abbas on March 28. President Abbas took steps to eliminate religious incitement, although incidents of such incitement still occurred. In previous years, there were credible reports that PA security forces and judicial officials colluded with criminal elements to extort property illegally from Christian landowners in the Bethlehem area. While there were no reports of Christians being targeted for extortion or abuse during the period covered by this report, the PA did not take action to investigate past injustices allegedly perpetrated by PA officials.

Israel exercises varying degrees of legal control in the Occupied Territories. Israel has no constitution; however, it also has a Basic Law that provides for freedom of worship. The Israeli government generally respects this right in practice in the Occupied Territories.

There was no change in the status of the Israeli government's respect for religious freedom in the Occupied Territories during the reporting period. Israel's strict closure policies frequently restricted the ability of Palestinians to reach places of worship and practice their religions. The construction of a separation barrier by the government of Israel, particularly in and around East Jerusalem, also severely limited access to mosques, churches, and other holy sites, and seriously impeded the work of religious organizations that provide education, healthcare, and other humanitarian relief and social services to Palestinians. Such impediments were not exclusive to religious believers or to religious organizations, and at times the Israeli government made efforts to lessen the impact on religious communities. The Israeli government confiscated land (usually offering limited compensation, which churches do not accept) belonging to several religious institutions to build its separation barrier between East Jerusalem and the West Bank. However,

according to the Israeli government, it sought to build the barrier on public lands where possible, and when private land was used, provided opportunities for compensation.

Christians and Muslims generally enjoy good relations, although tensions exist. Strong societal attitudes are a barrier to conversions from Islam. Relations between Jews and non-Jews, as well as among the different branches of Judaism, are strained. Societal tensions between Jews and non-Jews exist and such tensions remained high during the reporting period; however continuing violence also contributes to societal tensions and was apparent during Israel's disengagement from Gaza and portions of the West Bank in 2005. The violence that has occurred since the outbreak of the second Intifada (uprising) in October 2000 has significantly curtailed religious practice in many areas of the Occupied Territories. This violence included severe damage to places of worship and religious shrines in the Occupied Territories.

Prior to the establishment of the Hamas-led government on March 28, 2006, the U.S. government discussed religious freedom problems with the PA and the Israeli government as part of its overall policy to promote human rights.

Section I. Religious Demography

The Gaza Strip covers an area of 143 square miles, and its population is approximately 1.3 million persons. The West Bank (excluding East Jerusalem) covers an area of 2,238 square miles, and its population is approximately 2.4 million persons, not including approximately 250,000 Israeli settlers. East Jerusalem covers an area of twenty-seven square miles, and its population is approximately 400,000 persons, not including approximately 180,000 Israeli settlers.

Approximately 98 percent of Palestinian residents of the Occupied Territories were Sunni Muslims. According to the sum of estimates provided by individual Christian denominations (which appear significantly overstated), the total number of Christians was approximately 200,000. Other estimates placed the Christian community between 40,000 to 90,000 persons. A majority of Christians were Greek Orthodox; the remainder consisted of Roman Catholic and Greek Catholic Protestant, Syrian Orthodox, Armenian, Coptic, Maronite, and Ethiopian Orthodox denominations. Christians were concentrated primarily in the areas of Jerusalem, Ramallah, and Bethlehem. According to municipal officials in Bethlehem, since 2002 approximately 2,800 Christians from the Bethlehem area had left the West Bank for other countries. According to Christian leaders, most left for economic and security reasons. Low birth rates among Palestinian Christians had also contributed to its shrinking minority status. There was also a community of approximately 400 Samaritans located on Mount Gerazim near Nablus in the West Bank.

Adherents of several denominations of evangelical Christians, as well as members of the Jehovah's Witnesses, operated in the West Bank. Foreign missionaries operate in the Occupied Territories, including a small number of evangelical Christian pastors who reportedly sought to convert Muslims to Christianity. While they maintained a generally low profile, the PA was aware of their activities and generally did not restrict them.

Section II. Status of Religious Freedom

Legal/Policy Framework

The PA does not have a constitution; however, the Basic Law provides for religious freedom, and the PA generally respected this right in practice. The Basic Law states that "Islam is the official religion in Palestine," and that "respect and sanctity of all other heavenly religious groups (i.e., Judaism and Christianity) shall be maintained." In 2002 the Basic Law was approved by the Palestinian Legislative Council (PLC) and signed by then-President Yasir Arafat. The Basic Law states that the principles of Shari'a (Islamic law) are "the main source of legislation."

Churches in Jerusalem, the West Bank, and Gaza operate under one of three general categories: churches recognized by the status quo agreements reached under Ottoman rule in the late nineteenth century, Protestant and evangelical churches established between the late nineteenth century and 1967, which, although they exist and operate, are not recognized officially by the PA, and a small number of churches that became active within the last decade, and whose legal status is more tenuous.

The first group of churches is governed by nineteenth century status quo agreements reached with Ottoman authorities, which the PA respects, and that specifically established the presence and rights of the Greek Orthodox, Roman Catholic, Armenian Orthodox, Assyrian, Syrian Orthodox, Greek Catholic, Coptic, and Ethiopian Orthodox churches. These churches are "recognized" by the Israeli Government. The Episcopal and Lutheran churches were added later to this list. The PA, immediately upon its establishment, recognized these churches and their rights. Like Shari'a courts under Islam, these religious groups are permitted to have ecclesiastical courts whose rulings are considered legally binding on personal status and some land problems. Civil courts do not adjudicate on such matters.

Churches in the second category, which includes the Assembly of God, Nazarene Church, and some Baptist churches, have unwritten understandings with the PA based on the principles of the status quo agreements. They are permitted to operate freely and are able to perform certain personal status legal functions, such as issuing marriage certificates.

The third group of churches consists of a small number of proselytizing churches, including Jehovah's Witnesses and some evangelical Christian groups. These groups have encountered opposition in their efforts to obtain recognition, both from Muslims who oppose their proselytizing, and from Christians who fear that the new arrivals may disrupt the status quo. However, these churches generally operate unhindered by the PA.

In practice, the PA requires Palestinians to declare religious affiliation on identification papers. All legal matters relating to personal status must be handled in either Islamic or Christian ecclesiastical courts if such courts exist for the individual's denomination. All legally recognized individual sects are empowered to adjudicate personal status matters, and in practice most do so. Neither the PA nor the Israeli government currently has a civil marriage law. Legally, members of one religious group mutually may agree to submit a personal status dispute to a different Christian denomination to adjudicate, but in practice this does not occur. Churches that are not

officially recognized by the PA or the Israeli government must obtain special permission to perform marriages or adjudicate personal status issues; however, in practice non-recognized churches advise their members to marry (or divorce) abroad.

Since Islam is the official religion of the PA, Islamic institutions and places of worship receive preferential treatment. The PA has a Ministry of Waqf and Religious Affairs, which pays for the construction and maintenance of mosques and the salaries of many Palestinian imams. The government of Jordan maintains responsibility for waqf institutions in Jerusalem. The Ministry also provides limited financial support to some Christian clergymen and Christian charitable organizations. The PA does not provide financial support to any Jewish institutions or holy sites in the West Bank; these areas are generally under Israeli control.

The PA requires that religion be taught in PA schools, with separate courses for Muslim and Christian students. A compulsory curriculum requires the study of Christianity for Christian students and Islam for Muslim students in grades one through six. The PA Ministry of Education and Higher Education (MOEHE) revised its primary and secondary school textbooks. A USG-funded review of Palestinian textbooks concluded that the textbooks did not cross the line into incitement but continued to show elements of imbalance, bias, and inaccuracy.

Critics noted the new textbooks often ignored historical Jewish connections to Israel and Jerusalem.

The PA does not officially sponsor interfaith dialogue; however, it sends representatives to meetings on improving inter-religious relations and attempts to foster goodwill among Muslim and Christian religious leaders. The PA makes an effort to maintain good relations with the Christian community; however, the PA has not taken sufficient action to remedy past harassment and intimidation of Christian residents of Bethlehem by the city's Muslim majority. The PA judiciary failed to adjudicate numerous cases of seizures of Christian-owned land in the Bethlehem area by criminal gangs. There were credible reports that PA security forces and judicial officials colluded with gang members to extort property illegally from Christians. In previous years, PA officials appear to have been complicit in property extortion of Palestinian Christian residents. Several attacks against Christians in Bethlehem went unaddressed by the PA, but authorities investigated attacks against Muslims in the same area.

PA President Abbas has informal advisors on Christian affairs. Six seats in the 132-member PLC are reserved for Christians; there are no seats reserved for members of any other faith. The PA observes several religious holidays, including Eid al-Fitr, Eid al-Adha, Zikra al-Hijra al-Nabawiya, Christmas, and the Birth of the Prophet. Christians also may observe the Easter holiday.

Israel exercises varying degrees of legal control in the Occupied Territories. The international community considers Israel's authority in the Occupied Territories to be subject to the 1907 Hague Regulations and the 1949 Geneva Convention relating to the Protection of Civilians in Time of War. The Israeli government considers the Hague Regulations applicable and maintains that it largely observed the Geneva Convention's humanitarian provisions. The Israeli government applies Israeli law to East Jerusalem, which it annexed after 1967; however, the U.S.

government considers Jerusalem a permanent status issue to be resolved in negotiations between Israel and the Palestinians.

The Israeli government gives preferential treatment to Jewish residents of the Occupied Territories, including East Jerusalem, when granting permits for home building and civic services. For example, Palestinian residents of Jerusalem pay the same taxes as Jewish residents, but Palestinian residents receive significantly fewer municipal services than Jewish residents. Many of the national and municipal policies enacted in Jerusalem are designed to limit or diminish the non-Jewish population of Jerusalem. These are official policies that every Jerusalem municipal government has acknowledged and followed since 1967, and that Israeli ministers have at times openly admitted. According to Palestinian and Israeli human rights organizations, the Israeli government uses a combination of zoning restrictions on building for Palestinians, confiscation of Palestinian lands, and demolition of Palestinian homes to "contain" non-Jewish neighborhoods, while simultaneously permitting Jewish settlement in predominantly Palestinian areas in East Jerusalem.

Restrictions on Religious Freedom

The Haram al-Sharif (Noble Sanctuary), contains the Dome of the Rock and the al-Aqsa Mosque, among the most holy sites in Islam. Jews refer to the same place as the Temple Mount and consider it the location of the ancient Jewish temple. The location has been, with all of East Jerusalem, under Israeli security control since 1967, when Israel captured the city (East Jerusalem was formally annexed in 1980, and thus Israel applies its laws to East Jerusalem). The Haram al-Sharif is administered, however, by the Islamic waqf, a PA-affiliated but Jordanian-funded and administered Muslim religious trust for East Jerusalem, the West Bank, and the Gaza Strip. The Israeli police control the compound's entrances, and limit access to the compound. The waqf can object to entrance of particular persons, such as non-Muslim religious radicals, or to prohibited activities, such as prayer by non-Muslims or disrespectful clothing or behavior, but lacks authority to remove anyone from the site, and thus must rely on Israeli police to enforce site regulations. In practice, waqf officials claimed that police often allowed religious radicals (such as Jews seeking to rebuild the ancient Temple on the site and to remove the mosques) and immodestly dressed persons to enter and often were not responsive to enforcing the site's rules.

While non-Muslims (except guests of the waqf) were not allowed to enter the Haram al-Sharif/Temple Mount from September 28, 2000 (the date of former Likud party head Ariel Sharon's visit which sparked unrest) until August 2003, non-Muslims could visit the site during designated visiting hours. The Israeli government, as a matter of stated policy, has prevented non-Muslims from worshipping at the Haram al-Sharif/Temple Mount since 1967. Israeli police consistently did not permit public prayer on public safety grounds and publicly indicated that this policy has not changed in light of the renewed visits of non-Muslims to the compound or the court ruling on the issue. Waqf officials contend that the Israeli police, in contravention of their stated policy and the religious status quo, have allowed members of radical Jewish groups to enter and to worship at the site. Spokesmen for these groups have claimed successful attempts to pray inside the compound in interviews with the Israeli media. The Waqf interprets police actions as part of an Israeli policy to incrementally reduce Waqf authority over the site and to give non-Muslims rights of worship in parts of the compound.

Since October 2000, the Israeli government, citing security concerns, prevented most Palestinians from the West Bank and Gaza from reaching the Haram al-Sharif by prohibiting their entry into Jerusalem. Restrictions were often placed on entry into the Haram al-Sharif even for Palestinian residents of Jerusalem, such as a frequently implemented restriction on males under the age of forty-five.

There were also disputes between the Muslim administrators of the Haram al-Sharif/Temple Mount and Israeli authorities regarding Israeli restrictions on waqf attempts to carry out repairs and physical improvements on the compound and its mosques. In 2005 Palestinian workers under direction of Jordanian engineers worked on restoring tiles on the Dome of the Rock and Ottoman-era stones on the southern and eastern walls of the compound. Israeli authorities prevented the waqf from conducting several improvement projects or removing debris from the site, alleging that the waqf was attempting to alter the nature of the site or to discard antiquities of Jewish origin.

Personal status law for Palestinians is based on religious law. For Muslim Palestinians, personal status law is derived from Shari'a, and various ecclesiastical courts rule on personal status issues for Christians. A 1995 PA presidential decree stipulated that all laws in effect before the advent of the PA would continue in force until the PA enacted new laws or amended the old ones. Therefore, in the West Bank, which was formerly under Jordanian rule, the Shari'a-based Jordanian Status Law of 1976 governs women's status. Under the law, which includes inheritance and marriage laws, women inherit less than male members of the family. The marriage law allows men to take more than one wife, although few do so. Prior to marriage, a woman and man may stipulate terms in the marriage contract that govern financial and child custody matters in the event of divorce. Reportedly, few women use this section of the law. Personal status law in Gaza is based on Shari'a-centered law as interpreted in Egypt; however, similar versions of the attendant restrictions on women described above apply as well.

Due to violence and security concerns, the Israeli government has imposed a broad range of strict closures and curfews throughout the Occupied Territories since October 2000. These restrictions largely continued during the reporting period and resulted in significantly impeded freedom of access to places of worship in the West Bank for Muslims and Christians.

In 2002, the Israeli government, citing security concerns, began constructing a barrier to separate most of the West Bank from Israel, East Jerusalem, and Israeli settlement blocks. Construction of the barrier has involved confiscation of property owned by Palestinians, displacement of Christian, Muslim, and Israeli residents, and tightening of restrictions on movement for non-Jewish communities. The Israeli government asserts that it has mechanisms to compensate landowners for all takings, but there were several reports of land being taken along the barrier's route without compensation under the Absentee Property Statute or military orders.

Construction of the separation barrier continued in and around East Jerusalem during the reporting period, seriously restricting access by West Bank Muslims and Christians to holy sites in Jerusalem and in the West Bank. The barrier also negatively affected access to schools, healthcare providers, and other humanitarian services, although in some cases, the Government made efforts to lessen the impact on religious institutions.

The separation barrier made it difficult for Bethlehem-area Christians to reach the Church of the Holy Sepulcher in Jerusalem, and it made visits to Christian sites in Bethany and in Bethlehem difficult for Palestinian Christians who live on the Israeli side of the barrier, further fragmenting and dividing this small minority community. Foreign pilgrims sometimes experienced difficulty in obtaining access to Christian holy sites in the West Bank because of the barrier and Israeli restrictions on movement in the West Bank. The barrier and its checkpoints also impeded the movement of clergy between Jerusalem and West Bank churches and monasteries, as well as the movement of congregations between their homes and places of worship. On November 15, 2005, Israel opened a new crossing terminal from Jerusalem into Bethlehem for tourists and non-tourists. After initial complaints of long lines, the Israeli government instituted new screening procedures and agreed to ease access into Bethlehem during the Christmas holiday, with restrictions eased from December 24 to January 19. For example, the PA reported 30,000 visitors to the Church of the Nativity for various Christmas celebrations on December 24-25 2005, the largest turnout since 2000.

Hundreds of Armenian pilgrims attending the Holy Fire Celebration on April 22, 2006 were prevented by the Israeli Police from entering the Church of the Holy Sepulcher in the Old City of Jerusalem despite the fact that all had the necessary permits to enter.

In February 2003, the Israeli government issued confiscation orders for land in Bethlehem to build a barrier and military positions around Rachel's Tomb (a shrine holy to Jews, Christians, and Muslims). This barrier would leave the shrine on the "Israeli" side of the separation barrier. By the end of 2004, the Israeli government walled off and fortified the Rachel's Tomb area, and often restricted access to the site, only allowing Jewish visitors regular, unimpeded access and requiring prior coordination by other worshippers. In previous years, Jewish tourists visiting the shrine occasionally were harassed by Palestinians, but Israel's closure of the area and associated land expropriations impeded Muslim and Christian access to the site. Israeli settlers obtained ownership of some of the land and properties around the tomb through a disputed land deal.

In 2003, the Government of Israel confiscated land from the Baron Deir monastery in Bethlehem, which belongs to the Armenian Patriarchate, for construction of an Israel Defense Forces (IDF) patrol road in the area. Negotiations between the Patriarchate and the Israeli government reduced the amount of land confiscated.

The Armenian Patriarchate reported that the IDF caused significant damage to the property during incursions into Bethlehem in 2002. The parties reached an undisclosed agreement on compensation for this damage.

Since 2003, the Israeli government confiscated land (with some compensation generally offered but refused) belonging to three Catholic institutions in Bethany for construction of the separation barrier: the Camboni Sisters Convent, the Passionist Monastery, and the Sisters of Charity Convent and school. Construction of the barrier in this area, which was largely completed during the reporting period, involved confiscation of a significant portion of each church property. In the village of Bethany on the Mount of Olives, the Israeli government built an eight-meter high concrete separation barrier that crosses into the property of several Christian institutions. The barrier in Bethany blocks the annual Orthodox Palm Sunday procession from Lazarus' Tomb in

Bethany to the Old City of Jerusalem, but Israel has constructed a crossing terminal to allow foreign pilgrims and Christians living on the West Bank side of the barrier to participate in the procession.

Israeli closure policies, imposed according to the Israeli government due to security concerns, prevented tens of thousands of Palestinians from reaching places of worship in Jerusalem and the West Bank, including during religious holidays such as Ramadan, Christmas, and Easter. There have been several violent clashes in the past between Israeli police and Muslim worshippers on the Haram al-Sharif, which waqf officials allege have been due to the large police contingent kept on the site. On a few occasions, Muslim worshippers have thrown stones at police and police have fired tear gas and stun grenades at worshippers. Muslim worshippers also have held demonstrations at the site to protest reported Jewish extremist plans to damage the mosques or create a Jewish worship area at the site. Israeli security officials and police have generally been proactive and effective in dealing with such threats. There were no incidents of rocks thrown near the Western Wall during the period covered by this report.

The Israeli government's closure policy prevented several Palestinian religious leaders, both Muslim and Christian, from reaching their congregations. In previous years, several clergymen reported that they were subject to harassment at checkpoints; however, during the reporting period there were no reports of serious harassment of clergy.

During the reporting period, Palestinian violence against Israeli settlers prevented some Israelis from reaching Jewish holy sites in the Occupied Territories, such as Joseph's Tomb near Nablus. Since early 2001, following the outbreak of the Intifada, the Israeli government has prohibited Israeli citizens in unofficial capacities from traveling to the parts of the West Bank under the civil and security control of the PA. This restriction prevented Israeli Arabs from visiting Muslim and Christian holy sites in the West Bank, and it prevented Jewish Israelis from visiting other sites, including an ancient synagogue in Jericho. Visits to the Jericho synagogue ceased after disagreements erupted between Israel and the PA over security arrangements.

Settler violence against Palestinians prevented some Palestinians from reaching holy sites in the Occupied Territories. Settlers in Hebron have in previous reporting periods forcibly prevented Muslim muezzins from reaching the al-Ibrahimi Mosque/Tomb of the Patriarchs to sound the call to prayer, and have harassed Muslim worshippers in Hebron. Settler harassment of Palestinians in Hebron was a regular occurrence in this reporting period. The Israeli government did not effectively respond to settler-initiated blocking of religious sites.

While there were no specific restrictions placed on Palestinians making the Hajj, all Palestinians faced closures and long waits at Israeli border crossings, which often impeded travel for religious purposes. Palestinians generally were not allowed to use Ben-Gurion Airport. If residents of the Occupied Territories obtained a Saudi Hajj visa, they must travel by ground to Amman (for West Bankers) or Egypt (for Gazans) and then by ground, sea, or air to Jeddah, Saudi Arabia. Palestinians from Gaza who participated in the Hajj departed through the Palestinian-controlled Rafah crossing into Egypt.

Abuses of Religious Freedom

Throughout the year Israeli authorities still required that Christian clergy leave the West Bank or Jerusalem every ninety days to renew their tourist visas, disrupting their work and causing financial difficulties to their sponsoring religious organizations. Catholic and Orthodox priests and nuns and other religious workers often from Syria and Lebanon faced long delays, and sometimes denied applications, entirely without explanation; however, the Israeli government claimed that delays were due to security processing for visas and extensions. The shortage of foreign clergy impeded the functioning of Christian congregations.

In January 2006 the IDF re-opened the Mosque to Muslim worship for the birth of the Prophet Muhammad. Israeli officers selectively enforced orders preventing the muezzin at the al-Ibrahimi Mosque/Tomb of the Patriarchs in Hebron from sounding the call to prayer when Jews were praying in their portion of the shrine.

There were no reports of major damage to Christian churches during this reporting period. In previous reporting periods, there were credible reports that the Israeli military caused significant damage to church property.

In previous reporting periods, the PA failed to halt several cases of seizures of Christian-owned land in the Bethlehem area by criminal gangs. In many cases, criminal gangs reportedly used forged land documents to assert ownership of lands belonging to Christians. Police failed to investigate most of these cases. In two cases, police arrested and then released the suspects on bail and allowed them to continue occupying the land in question. Local religious and political leaders confirmed that no such attempts to seize Muslim-owned land took place.

In the midst of growing chaos and lawlessness in the West Bank and Gaza Strip, there were credible reports in previous years that PA security forces and judicial officials colluded with members of these gangs to seize land from Christians. In one reported case, a PA judge openly told a Palestinian Christian landowner that he and his partners in the PA intelligence services required a substantial bribe to allow the landowner to remain on his property. PA officials repeatedly promised Christian leaders that they would take action in these cases, but by the end of the reporting period, no action had been taken.

Officials from the Qalqilya branch of the YMCA relocated following a firebombing of its office by local Muslims in April 2006. Local Muslim leaders have written to the Hamas-led municipal council demanding that the branch office close.

There were no reports of religious prisoners or detainees in the Occupied Territories.

Forced Religious Conversions

There were no reports of forced religious conversion, including of minor U.S. citizens who had been abducted or illegally removed from the United States, or of the refusal to allow such citizens to be returned to the United States.

Section III. Societal Abuses and Discrimination

There generally were amicable relations between Christians and Muslims, although tensions exist. Relations between Jews and non-Jews often were strained. Tensions between Jews and non-Jews exist primarily as a result of the Palestinian-Israeli conflict, as well as Israel's control of access to sites holy to Christians and Muslims. Relations among different branches of Judaism were also strained. Some non-Orthodox Jews in Jerusalem have complained of discrimination and intolerance on the part of some Orthodox Jews.

Societal attitudes continued to be a barrier to conversions, especially for Muslims converting to Christianity. In previous reporting periods, there were reports that some Christian converts from Islam who publicized their religious beliefs were harassed or ostracized by their families or villages.

Muslim-Christian tension has been minimal during this reporting period, and the few instances of Muslim-Christian violence appear related to social or inter-family conflicts rather than religious disputes. Both Muslim and Christian Palestinians have accused Israeli officials of attempting to foster animosity among Palestinians by exaggerating reports of Muslim-Christian tensions.

Jewish settlers, either acting alone or in groups, engaged in assaulting Palestinians and destroying Palestinian property; however, most instances of violence or property destruction reportedly committed against Palestinians did not result in arrests or convictions.

Interfaith romance was a sensitive issue. Most Christian and Muslim families in the Occupied Territories encouraged their children-especially their daughters-to marry within their respective religious groups. Couples who challenged this societal norm encountered considerable societal and familial opposition. For example, there were reports of some Christian women receiving death threats from Christian family members and community leaders for marrying Muslim men during the reporting period.

In September 2005, Muslims rioted through the predominantly West Bank Christian village of Taybah, torching homes, vandalizing private vehicles, and assaulting residents. The violence followed a reported romance between a Muslim woman and a Christian man from Taybah. In October 2004, a yeshiva student spat at the Armenian archbishop of Jerusalem while he was engaged in a religious procession through the Old City. The student was arrested and ordered to remain away from the Old City for seventy-five days. He also made a formal apology. The Holy See and the country's chief rabbinate issued a joint condemnation of the assault at the end of a meeting of Catholic and Jewish officials near Rome shortly after the incident. There were several other spitting incidents, usually involving Armenian clergy due to their proximity to several Jewish quarter yeshivas. The mayor of Jerusalem, the chief rabbinate, and the heads of several yeshivas have strongly criticized such behavior and punished those involved. The armenian patriarchate was satisfied with measures that the Israeli government, Jerusalem municipality and yeshivas have taken after these incidents, but believes that more education on tolerance and respect for other religious groups would be helpful.

A March 2005 dispute over the transfer of property in Jerusalem's Old City owned by the Greek Orthodox Church to Jewish investors ended with senior Orthodox leaders calling for the removal of the Greek Patriarch of Jerusalem, Irineos I. The sale enraged Palestinians, who saw the deals

as a betrayal of Palestinian parishioners by the mostly-Greek clergy and feared that such purchases would affect Palestinian claims on East Jerusalem as the capital of a future Palestinian state. Patriarch Irineos I was ousted from his position by the Orthodox synod of bishops, but did not resign, claiming that proceedings against him were illegal. Jordan and the PA have rescinded official recognition of Irineos I, but at the end of the period covered by this report Israel still recognized him as patriarch and kept a contingent of Israeli police inside the Greek Orthodox Monastery to protect him.

In general, established Christian subgroups did not welcome less-established evangelical churches. Settlers from the Hebron area and the southern West Bank severely beat and threatened several international activists, including individuals from the Christian Peacemaker Teams that escort Palestinian children to school and protect Palestinian families from settler abuse. While it is unclear whether the attackers' motives stemmed from religious extremism as opposed to ultra-nationalism, the activists felt that local Israeli police did not actively pursue the suspects and oppose the Christian Peacemaker Teams' presence in Palestinian villages.

The strong correlation between religion, ethnicity, and politics in the Occupied Territories at times imbues the Israeli-Palestinian conflict with a religious dimension. The rhetoric of some Jewish and Muslim religious leaders has been harsher since the outbreak of the Intifada in October 2000.

In previous years, Muslims at the Haram al-Sharif/Temple Mount threw stones at Jewish worshippers on the Western Wall plaza, leading to major police confrontations; however, there were no incidents of stone-throwing at the plaza during the period covered by this report.

Palestinian media frequently published and broadcast material criticizing the Israeli occupation, including dismissing Jewish connections to Jerusalem. In September 2005 Sheikh Taysir al-Tamimi, the chief justice and president of the Higher Shari'a Council, called the Israeli government's claim of a Jewish connection to the Haram al-Sharif/Temple Mount a "baseless lie" and provocation to Muslims everywhere. Al-Tamimi also warned against the "Judaization" of Jerusalem. Rhetoric by Palestinian terrorist groups included expressions of anti-Semitism. Some Muslim religious leaders preached sermons on the official PA television station that included expressions of anti-Semitism. However, on October 28, Israeli media quoted PLO Chief Negotiator Sa'eb Erekat's statement that the Iranian president's declaration that Israel should be wiped off the map was "unacceptable."

Israeli activists reported numerous examples in which PA television shows invoked messages that activists considered anti-Semitic or that attempted to de-legitimize Jewish history in general. Israeli settler radio stations often depicted Arabs as subhuman and called for Palestinians to be expelled from the West Bank. Right-wing, pro-settler organizations such as *Women in Green*, and various Hebron-area publications, have published several cartoons that demonize Palestinians. Also, the sermons of some Muslim imams occasionally included anti-Semitic messages, such as a May 13, 2005, sermon delivered by Shaykh Ibrahim Mudayris that ran on PA television, in which he compared Jews (in the context of land conflicts) to "a virus, like AIDS." In May 2005 media quoted PA Minister of Information Nabil Sh'ath as calling for Mudayris' suspension from the PA religious affairs ministry and Muslim waqf, which employed

Mudayris, and banned him from delivering Friday sermons. At the end of the reporting period, Mudayris was no longer delivering Friday sermons.

There were instances of Jewish-nationalist extremists harassing Muslims. On several occasions, a group of Jewish-nationalist extremists known as the *Temple Mount Faithful* attempted to force their way inside the wall enclosing the Haram al-Sharif/Temple Mount. In addition, the same group periodically attempted to lay a cornerstone for the building of a new Jewish temple that would replace the Islamic Dome of the Rock shrine, an act that Muslims considered an affront.

Section IV. U.S. Government Policy

Prior to the establishment of the Hamas-led PA government, U.S. officials maintained dialogue with PA officials on religious issues, in particular on incitement in the Palestinian media. In light of the new PA government led by Hamas which has not agreed to the Quartet principles that it disavow violence, recognize Israel, and accept previous agreements and obligations, U.S. officials have no contact with PA officials under the authority of the prime minister or any other minister in the Hamas-led cabinet, including working-level officials in these ministries. Contact is allowed with PA President Abbas and officials in the Office of the PA president and other officials in agencies directly under the authority of the PA president. The consulate general continues to maintain contacts with representatives of the Jerusalem waqf-an Islamic trust and charitable organization that owns and manages large amounts of real estate, including the Haram al-Sharif/Temple Mount in Jerusalem-as well as with the various Christian churches and Jewish communities in Jerusalem.

U.S. officials regularly meet with religious representatives to ensure that their legitimate grievances are reported and addressed.

During the reporting period, the consulate investigated a range of charges, including allegations of damage to places of worship, incitement, and allegations concerning access to holy sites. Consulate general officers met with representatives of the Bethlehem Christian community and traveled to the area to investigate charges of mistreatment of Christians by the PA. The consulate general raised the issue of seizure of Christian-owned land in discussions with PA officials.

In October 2004, a representative from the Office of International Religious Freedom visited Jerusalem and met with government officials, NGO representatives, Muslim Waqf officials, and Christian clergy and religious workers, particularly those negatively impacted by construction of the separation barrier.

In several cases, the Israeli government agreed to consider changes to the route of the barrier in Jerusalem near several Christian institutions and installed pedestrian gates in the barrier to facilitate the passage of priests and other religious workers.

Released on September 15, 2006

III. Documents from the Israel Ministry of Foreign Affairs

- A. Israel Ministry of Foreign Affairs, *Cabinet Communique*, 16 Dec. 2007, <http://www.mfa.gov.il/MFA/Government/Communiques/2007/Cabinet+communique+16-Dec-2007.htm>.

Cabinet Communique

16 Dec 2007

(Communicated by the Cabinet Secretariat)

At the weekly Cabinet meeting on Sunday, 16 December 2007:

1. Prime Minister Ehud Olmert made the following remarks: "The conference of donor countries will convene tomorrow in Paris and will deal in strengthening the Palestinian Authority (PA) as part of the international effort to establish its economic, civil, institutional and administrative base in order to allow it to function as a developing entity ahead of statehood, that is capable of properly running its own affairs. Of course, the main issue from the State of Israel's point-of-view in the end is the PA's ability to properly deal with the security issue, defeat the terrorist organizations and assure that there will be no terrorism directed at Israel.

"Israel will participate in this meeting. Naturally, Foreign Minister Tzipi Livni, who will present the Israeli position and participate in the discussions, will lead the Israeli delegation. We certainly support the strengthening of the PA and the appropriate international mobilization in order to bring about an improvement of the Palestinian residents' daily lives, especially by upgrading their own economic infrastructure that will not be dependent on the State of Israel once the appropriate administrative institutions are established. As I have said, this includes - first and foremost - proper law-enforcement organizations and systematic action against the terrorist organizations.

"We are cooperating with the International Quartet Envoy, former UK Prime Minister Tony Blair. We will continue to cooperate with him and will help him in strengthening projects on the agenda.

"Industry, Trade and Labor Minister Eli Yishai will leave today for Uruguay in order to sign a free trade agreement with the MERCOSUR countries. I remind everyone that Israel already has free trade agreements with the NAFTA member countries."

Prime Minister Olmert praised Minister Yishai, his Ministry's Foreign Trade Administration and the Foreign Ministry over the successful negotiations with MERCOSUR. He also referred to the recent secondary school teachers' strike.

2. The Cabinet discussed the issue of compensation for lower income strata for the increase in bread prices and decided to rescind its 11 November 2007 decision.

3. The Cabinet approved the transfer - in 2008 - of NIS 7,955,000 in assistance to various regional councils that absorbed Gaza Strip and northern Samaria evacuees:

Name of Regional Council	Allocation (in thousands of NIS)
Eshkol	465
Bnei Shimon	435
Ashkelon Coast	3,565
Lachish	550
Nahal Sorek	2,170
Sapir	770
TOTAL:	7,955

4. The Cabinet discussed boosting enforcement efforts against unauthorized (pirate) radio stations.

5. The Cabinet appointed three new members to the Israel Lands Authority Council.

6-7. The Cabinet approved the Ministerial Committee on Legislation and Law Enforcement's 10 December 2007 decision regarding certain amendments to income tax regulations.

8. Pursuant to the Ministerial Committee on the Greek Orthodox Patriarch of Jerusalem's 28 October 2007 decision, the Cabinet approved Archbishop Theofilos III as Greek Orthodox Patriarch of Jerusalem in place of Irineos I, as per the 22 August 2005 decision of the Holy Synod of the Greek Orthodox Patriarchate of Jerusalem.

- B. Yishai Eldar, *Focus on Israel - The Christian Communities of Israel*, March 30, 2003, available at <http://www.mfa.gov.il/MFA/Facts+About+Israel/People/Focus+on+Israel+-+The+Christian+Communities+of+Isr.htm>.

The Christian Communities of Israel **by Yishai Eldar**

The history of the Christian communities in the Land of Israel begins with the life and ministry of Jesus of Nazareth. After his death, the early Apostolic Church, at least that in and around Jerusalem, remained Judeo-Christian until the rebuilding of Jerusalem (c. 130 CE) by the Emperor Hadrian as the Roman city of Aelia Capitolina. Since this date, the local church has been gentile in composition. It was also one and undivided, until the early Ecumenical Councils. By the time of the Muslim conquest, in the 7th century, the church in the East was already subdivided into various sects, although they seem to have continued to share in the use of the holy places. It was only with the Crusader Kingdom, and the paramountcy (praedominium) enjoyed by the Latin church of the West, that contention arose regarding the holy places and continued unabated through the Mamluk and Ottoman periods until the declaration of the Status Quo in 1852.

Of the over 6 million people living in Israel today, Christians constitute 2.1% of the population (Jews 79.2%, Muslims 14.9%, Druze 1.6%, and 2.2% not classified by religion).

The Christian communities may be divided into four basic categories: Chalcedonian-Orthodox, Non-Chalcedonian Orthodox (Monophysite), Roman Catholic (Latin and Uniate) and Protestant. These communities consist of some 20 ancient and indigenous churches, and another 30, primarily Protestant, denominational groups. Except for national churches, such as the Armenian, the indigenous communities are predominantly Arabic-speaking; most of them, very likely, descendants of the early Christian communities of the Byzantine period.

The Chalcedonian-Orthodox Churches

The Chalcedonian-Orthodox (also termed Eastern Orthodox) churches are a family of self-governing churches that follow the doctrines of the seven Ecumenical councils, and acknowledge the honorary primacy of the Patriarch of Constantinople. Historically, these churches developed from the four ancient patriarchates of the East: Alexandria, Antioch, Constantinople and Jerusalem.

The Greek Orthodox Patriarchate of Jerusalem considers itself to be the "mother church" of Jerusalem, to whose bishop patriarchal dignity was granted by the Council of Chalcedon in 451. It sided with the other Eastern Orthodox churches in the schism with Rome in 1054. Much of the dispute was a matter of mutual misunderstanding, and the historic meeting in Jerusalem in 1964 between Pope Paul VI and the Ecumenical Patriarch of Constantinople, Athenagoras, marked the beginning of reconciliation.

At the time of the Crusader conquest of Jerusalem in 1099, the (Orthodox) Patriarchate of Jerusalem, already in exile, was removed to Constantinople. Permanent residence in Jerusalem by the Greek Orthodox Patriarch was not reestablished until 1845.

Since 1662, direction of Greek Orthodox interests in the Holy Land has rested with the Brotherhood of the Holy Sepulcher, which has sought to safeguard the status of the Orthodox Church in the holy places and to preserve the Hellenic character of the Patriarchate. The parishes

are predominantly Arabic-speaking, and are served by married Arab priests as well as by members of the Brotherhood of the Holy Sepulcher.

Two historic Eastern Orthodox national churches have representation in Israel: the Russian and the Rumanian. Being in communion with the Greek Orthodox Patriarchate, they are under its local jurisdiction.

The Russian Orthodox Mission was established in Jerusalem in 1858, but Russian Christians had begun visiting the Holy Land in the 11th century, only a few years after the Conversion of Kiev. Such visits continued over the next 900 years, eventually growing into the great annual pilgrimages of the late 19th century, which continued until World War I and ended with the Russian Revolution. Since 1949, title to Russian church properties in what was by then the territory of Israel has been held by the Russian Orthodox Mission (Patriarchate of Moscow); title to properties in areas then under Jordanian control (1948-67) remains with the Russian Ecclesiastical Mission representing the Russian Orthodox Church in Exile. The two missions are each led by an archimandrite, who is assisted by a number of monks and nuns.

A mission representing the Rumanian Orthodox Church was established in 1935. It is led by an archimandrite and consists of a small community of monks and nuns resident in Jerusalem.

The Non-Chalcedonian Orthodox Churches

The non-Chalcedonian Orthodox churches are churches of the East (Armenian, Coptic, Ethiopian and Syrian) that refused at the time to acknowledge the decrees issued by the Council of Chalcedon in 451. One of the decrees concerned the relationship between the divine and human natures attributed to Jesus. Today, however, it is widely recognized in both the Chalcedonian and non-Chalcedonian churches that the Christological differences between them were merely a matter of verbal formulation and not of substantial doctrinal variance.

The Armenian Orthodox Church dates from the year 301 and the conversion of Armenia, the first nation to embrace Christianity. An Armenian religious community has been present in Jerusalem since the 5th century. Armenian sources date the first Patriarchate to a charter given by the Caliph Omar to Patriarch Abraham in the year 638. The Armenian Quarter in the Old City of Jerusalem was already established by the beginning of the 14th century. From the end of the 19th century, and particularly during and immediately following World War I, the local community increased in size.

The Coptic Orthodox Church has its roots in Egypt, where most of the population became Christian during the first centuries CE. According to Coptic tradition, members of the community arrived in Jerusalem with St. Helena, mother of the Emperor Constantine (beginning of 4th century). This church had an early influence on the development of desert monasticism in the wilderness of Judea. The community flourished during the Mamluk period (1250-1517), and again with Mohammed Ali in 1830. Since the 13th century, the (Coptic) Patriarch of Alexandria has been represented in Jerusalem by a resident archbishop.

The Ethiopian Orthodox Church has had a community in Jerusalem since the Middle Ages or even earlier. Early Church historians mention Ethiopian pilgrims in the Holy Land as early as the 4th century. What is certain is that during the centuries that followed, the Ethiopian Church enjoyed important rights in the holy places, but lost most of them during the Ottoman period, prior to the declaration of the Status Quo.

Today the Ethiopian Orthodox Church in Israel is a small community led by an archbishop and consisting mostly of a few dozen monks and nuns living in the Old City of Jerusalem and at the Ethiopian cathedral monastery and in the western part of the city. There is

also a small resident lay community. Since the renewal of diplomatic relations between Israel and Ethiopia in 1989, there has been an increase in Christian pilgrimage from Ethiopia, especially for Christmas and Eastern Holy Week observances.

The Syrian Orthodox Church is a successor to the ancient Church of Antioch, and one of the oldest Christian communities in the Middle East. Among its traditions is the continued use of the Syriac language (Western Aramaic) in liturgy and prayers. Its members are also known as Jacobites (after Jacob Baradaeus, who organized the Church in the 6th century). Their patriarch is resident in Damascus. There have been Syrian Orthodox bishops in Jerusalem since 793; permanently, since 1471. Today the local Church is headed by a bishop, who resides in Jerusalem at the monastery of St. Mark.

The Roman Catholic and Uniate Churches

The Roman Catholic and Uniate churches are churches that are in communion with Rome and recognize the primacy and spiritual authority of the Pope (who as bishop of Rome holds the ancient patriarchy of the West). In matters of liturgy, the Eastern churches in communion with Rome follow their own languages and traditions.

Whatever the early relations between Rome and Constantinople, there was no attempt to establish a Western Church in the Holy Land independent of the existing Orthodox Patriarchate until the establishment of the Latin Patriarchate of Jerusalem during the Crusader kingdom (1099-1291). The office of the Latin Patriarch was reconstituted in 1847. Until then, responsibility for the local church rested with the Franciscan Order, which has served as custodian of Latin holy places since the 14th century.

Today the Latin Patriarchate of Jerusalem is headed by a bishop who has the title of patriarch. He is assisted by three vicars, resident in Nazareth, Amman and Cyprus. In popular parlance, local Roman Catholics are referred to as "Latins", in reference to their historic liturgical language. Since the Second Vatican Council, however, the Roman Catholic liturgy is generally celebrated in the vernacular, except at some of the holy places, such as the Church of the Holy Sepulcher and the Church of the Nativity, where the mass and other services are still celebrated in Latin.

In 1997, Israel and the Holy See signed an agreement which deals with the legal personality of the Catholic Church in Israel.

The Maronite Church is a Christian community of Syrian origin, most of whose members live in Lebanon. It has been in formal communion with the Roman Catholic Church since 1182, and is the only Eastern church which is entirely Catholic. As a uniate body (an Eastern church in communion with Rome, which retains its respective language, rites and canon law) it possesses its own liturgy, which is in essence an Antiochene rite in the Syriac language. Most members of the Maronite community in Israel reside in the Galilee. The Maronite Patriarchal Vicariate in Jerusalem dates from 1895.

The (Melkite) Greek Catholic Church came into being in 1724, the result of a schism in the Greek Orthodox Church of Antioch. (The term "Melkite", literally "royalist", is derived from the Syriac, Western-Aramaic word malko, which means "royal" or "king". Its use dates from the 4th century and refers to those local Christians who accepted the "Definition of Faith" of the Council of Chalcedon and remained in communion with the Imperial See of Constantinople.)

A Greek Catholic archdiocese was established in the Galilee in 1752. Twenty years later, Greek Catholics of Jerusalem were placed under the jurisdiction of the Melkite Patriarch of Antioch, who is represented in Jerusalem by a patriarchal vicar.

The Syrian Catholic Church, a uniate breakaway from the Syrian Orthodox Church, has been in communion with Rome since 1663. The Syrian Catholics have their own patriarch (resident in Beirut), and since 1890 a patriarchal vicar in Jerusalem has served as spiritual leader of the small local community there and in Bethlehem. In July 1985, the community consecrated the new patriarchal church in Jerusalem dedicated to St. Thomas, apostle to the peoples of Syria and India.

The Armenian Catholic Church separated from the Armenian Orthodox Church in 1741, though previously an Armenian community in Cilicia (in southern Anatolia) had been in contact with Rome since the Crusader period. The Armenian Catholic patriarch is resident in Beirut because at the time, Ottoman authorities forbade residency in Constantinople. A patriarchal vicariate was established in Jerusalem in 1842. Though in union with Rome, the church has good relations with the Armenian Orthodox Church, and both cooperate for the benefit of the community as a whole.

The Chaldean Catholic Church is a uniate descendant of the ancient (Assyrian) Apostolic Church of the East (sometimes called Nestorian). Its members still preserve the use of Syriac (Eastern Aramaic) as their liturgical language. It was established in 1551, and its patriarch is resident in Baghdad. The community in the Holy Land numbers no more than a few families; even so, the Chaldean Catholic Church retains the status of a "recognized" religious community. Since 1903, the Chaldeans have been represented in Jerusalem by a non-resident patriarchal vicar.

The Coptic Catholic Church has been in union with Rome since 1741. In 1955 the uniate Coptic Catholic Patriarch of Alexandria appointed a patriarchal vicar to serve the small community in Jerusalem.

* * *

Of major significance for the Catholic churches in the Holy Land was the signing, on 30th December 1993, of a Fundamental Agreement between the Holy See and the State of Israel, which led to the establishment of full diplomatic relations between them a few months later.

The Protestant Churches

The Protestant communities in the Middle East only date from the early 19th century and the establishment of Western diplomatic representations in Jerusalem. The intention of these missions was to evangelize the Muslim and Jewish communities, but their only success was in attracting Arabic-speaking Orthodox Christians.

In 1841, the Queen of England and the King of Prussia decided to establish a joint Anglican-Lutheran Protestant bishopric in Jerusalem. The scheme came to an end in 1886, but the office was continued by the Church of England, which in 1957 elevated its representative in Jerusalem to the rank of Archbishop. This was ended in 1976, with the creation of the new (Anglican) Protestant Episcopal Church in Jerusalem and the Middle East and the election and consecration of the first Arab bishop in Jerusalem. It is the largest Protestant community in the Holy Land. The Anglican bishop in Jerusalem has his seat in the Cathedral Church of St. George the Martyr, which is maintained by the Church of England through an appointed dean.

With the dissolution of the joint Anglo-Prussian venture in 1886, the German Lutheran Church established an independent presence in Jerusalem and the Holy Land. This community attracted an increasing number of Arabic-speaking members, many of them former pupils of schools and other institutions maintained by German Lutheran churches and societies. Since 1979, the Arabic-speaking congregation has had its own bishop, existing independently of the

small German-speaking congregation and the Lutheran Church in Germany, which is represented by a propst (dean). Both clerics share the premises of the Propstei on Muristan Road in the Old City of Jerusalem.

There are also small Danish, Swedish and English-speaking Lutheran congregations with representative clergy from the parent churches for the benefit of members who are visiting or resident in Israel. In 1982, the Norwegian Mission to Israel transferred authority and administration of its two mission churches in Haifa and Jaffa to the responsibility of the local congregations.

Baptist Church activities in the Holy Land began with the formation of a congregation in Nazareth in 1911. Today the Association of Baptist Churches has ten churches and centers in Akko, Cana, Haifa, Yafo, Jerusalem, Kfar-Yassif, Nazareth, Petah Tikva, Rama and Turan. The majority of the congregants are Arabic-speaking.

The (Presbyterian) Church of Scotland sent out its first mission to the Galilee in 1840, and for the next 100 years was actively engaged in the fields of education and medicine. Today a small, mostly expatriate community serving pilgrims and visitors, the Church of Scotland maintains a church and hospice in both Jerusalem and Tiberias. The independent Edinburgh Medical Missionary Society maintains a teaching hospital for nurses in Nazareth.

The Church of Jesus Christ of Latter-day Saints (Mormon) established a small community in Haifa in 1886 and in Jerusalem in 1972. Membership of the church today includes students of the Jerusalem Center for Near Eastern Studies, a branch of Brigham Young University of Provo, Utah (USA).

In addition to those already mentioned, there are any number of other, numerically small, Protestant denominational groups present in Israel.

Three Protestant communal agricultural settlements have been established in different parts of Israel in recent years. Kfar Habaptistim, north of Petah Tikva, was founded in 1955, and provides conference and summer-camp facilities for the Baptist and other Protestant communities in the country. Nes Ammim, near Nahariya, was founded by a group of Dutch and German Protestants in 1963, as an international center for the promotion of Christian understanding of Israel. Just west of Jerusalem, Yad Hashmonah, founded in 1971, operates a guest house for Christian visitors and pilgrims from Finland.

* * *

The International Christian Embassy in Jerusalem was founded in 1980 to demonstrate worldwide Christian support for Israel and for Jerusalem as its eternal capital. It is a center where Christians from all over the world can gain a biblical understanding of the country and of Israel as a modern nation. The ICEJs international network includes offices and representatives in 50 countries worldwide.

Freedom of Religion

The basic attitude of the state towards religious pluralism found expression in the 1948 Declaration of Independence:

"The State of Israel will be based on freedom, justice and peace as envisaged by the Prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture."

The document expresses the nations vision and its credo, and adherence to these principles is guaranteed by law. Each religious community is free to exercise its faith, observe its own holy days and weekly day of rest, and administer its own internal affairs.

Holy Places

Israel has many sites which are considered holy by the three monotheistic faiths (Judaism, Christianity and Islam). Freedom of access and worship is ensured at all of them. "The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of members of the various religions to the places sacred to them, or their feelings with regard to those places." (Protection of Holy Places Law, 1967) Among the holy sites which are of significance to Christianity are the Via Dolorosa, the Room of the Last Supper and the Church of the Holy Sepulcher in Jerusalem; the Church of the Annunciation in Nazareth; and the Mount of Beatitudes, Tabgha and Capernaum near Lake Kinneret (the Sea of Galilee).

The Ministry of Religious Affairs

Though responsible for meeting the ritual needs of all communities, the Ministry of Religious Affairs does not interfere in the religious life of the Christian communities. The Ministry's Department for Christian Communities serves as a liaison office with the governmental system to which the Christian communities can turn with problems and requests that may arise out of their status as minorities in Israel. The Ministry also serves as a neutral arbitrator in ensuring the preservation of the established status quo in those holy places where more than one Christian community has rights and privileges.

"Recognized" Communities

Certain Christian denominations have the status of being a "recognized" religious community. For historical reasons dating from Ottoman times, the ecclesiastical courts of such communities are granted jurisdiction in matters of personal status, such as marriage and divorce. The "recognized" Christian communities are the Greek Orthodox, the Armenian Orthodox, the Syrian Orthodox, the (Latin) Roman Catholic, the Maronite, the (Melkite) Greek Catholic, the Syrian Catholic, the Armenian Catholic, the Chaldean Catholic and, since 1970, the (Anglican) Episcopal.

- C. Israel Ministry of Foreign Affairs, *Society: Religious Freedom*, <http://www.mfa.gov.il/MFA/Facts%20About%20Israel/People/SOCIETY%20Religious%20Freedom> (last visited Dec. 19, 2007).

Religious Freedom

The Declaration of the Establishment of the State of Israel (1948) guarantees freedom of religion for all. Each religious community is free, by law and in practice, to exercise its faith, to observe its holidays and weekly day of rest and to administer its internal affairs. Each has its own religious council and courts, recognized by law and with jurisdiction over all religious affairs and matters of personal status such as marriage and divorce. Each has its own unique places of worship, with traditional rituals and special architectural features developed over the centuries.

Synagogue: Traditional Jewish Orthodox worship requires a minyan (quorum of ten adult males). Prayers take place three times daily. Men and women are seated separately, and heads are covered. Services may be led by a rabbi, cantor or congregant. The rabbi is not a priest or an intermediary with God, but a teacher. The focal point in the synagogue is the Holy Ark, which faces the Temple Mount in Jerusalem and contains the Torah scrolls. A prescribed weekly portion is read cyclically throughout the year. Services are particularly festive on the Sabbath (Saturday, the Jewish day of rest) and holidays.

Mosque: Muslim prayers take place five times daily. Men and women pray separately. Shoes are removed and a ritual ablution may be performed. Muslims pray facing Mecca in Saudi Arabia, the direction of which is indicated by a mihrab (niche) in the mosque wall. Services are performed by an imam, a Muslim prayer leader. On Friday, the traditional Muslim day of rest, a public sermon is usually preached.

Church: The form and frequency of Christian services vary according to denomination, but all observe Sunday, the day of rest, with special rituals. Services are conducted by a priest or minister. Men and women pray together. Men usually bare their heads, women may cover them. Services are often accompanied by music and choral singing. Traditionally, churches are cruciform in shape.

Holy Places

Each site and shrine is administered by its own religious authority, and freedom of access and worship is ensured by law. Major Holy Places are:

Jewish: The *Kotel*, the Western Wall, last remnant of the retaining wall of the Second Temple, and the Temple Mount, in Jerusalem; Rachel's Tomb, near Bethlehem; Tomb of the Patriarchs in the Cave of Machpela, in Hebron; tombs of Maimonides (Rambam) in Tiberias and Rabbi Shimon Bar Yohai in Meron.

Islamic: *Haram ash-Sharif* building complex on the Temple Mount, including the Dome of the Rock and Al-Aksa mosque, in Jerusalem; Tomb of the Patriarchs, in Hebron; El-Jazzar mosque, in Akko.

Christian: Via Dolorosa, Room of the Last Supper, Church of the Holy Sepulcher and other sites of Jesus' passion and crucifixion, in Jerusalem; Church of the Nativity, in Bethlehem; Church of the Annunciation, in Nazareth; Mount of Beatitudes, Tabgha and Capernaum, near the Sea of Galilee (Lake Kinneret).

Druze: Nebi Shueib (tomb of Jethro, father-in-law of Moses), near Horns of Hittin in Galilee.

Baha'i: (independent world religion founded in Persia, mid-19th century): Baha'i world center, Shrine of the Bab, in Haifa; Shrine of Baha'ullah, prophet-founder of the Baha'i faith, near Akko.

The Karaites, a Jewish sect dating back to the 8th century, profess strict adherence to the Torah (Five Books of Moses) as the sole source of religious law. Although considered a faction in Judaism and not a separate community, the Kara'ites maintain their own religious courts and tend to marry among themselves. Several thousand Kara'ites live in Israel today, mainly in Ramle, Ashdod and Be'er Sheva.

The Samaritans regard themselves as true Jews, faithful only to the Torah and its immediate sequel, the Book of Joshua. Mount Gerizim in Samaria is their holy site, where they believe Abraham tried to sacrifice Isaac and Solomon built the First Temple. Claiming descent from the 10 lost Israelite tribes, the estimated 600 remaining members of the ancient Samaritan people live today in two localities; about half in the village of Kiryat Luza near the peak of 'the mountain,' and the other half, who are Israeli citizens, live in their own mini-neighborhood in Holon near Tel Aviv. They speak Arabic in daily life and use an archaic form of Hebrew in their liturgy. So far as is known, there are no Samaritans anywhere else in the world.

- D. Shimon Shetreet, *Freedom of Religion in Israel*, available at http://www.mfa.gov.il/MFA/MFAArchive/2000_2009/2001/8/Freedom+of+Religion+in+Israel.htm (last visited Dec. 21, 2007).

Freedom of Religion in Israel

by Prof. Shimon Shetreet

LLB, LLM (Jerusalem); MCL, DCL (University of Chicago); Law Prof. Hebrew University of Jerusalem; former Minister of Religious Affairs in the Rabin government (1992-96).

Introduction

The question as to whether freedom of religion in all its aspects is adequately protected in any society can be answered by a careful examination of the relevant doctrines and practices of its legal system. There are significant sources for the protection of religious liberty in Israeli law. There have also been various efforts to incorporate religious norms or restrictions that reflect religious sources into the law of the land and an evaluation of these is part of any investigation of Israel's adherence to principles of freedom of conscience and religion.

It is proposed to examine freedom of religion from a number of aspects. In the opening sections, the report will analyze the scope of protection of religious liberty and the constitutional and legal norms which provide that protection. The paper will also discuss the relationship between religion and state in comparative perspectives. Special attention will be paid to the contribution of the Supreme Court to the protection of religious freedom. The latter part of the paper will discuss the state funding of religious institutions.

1. The Scope of Protection of Religious Liberty

The Palestine Mandate of 1922 contained a number of provisions ensuring freedom of religion and conscience and protection of holy places, as well as prohibiting discrimination on religious grounds. Further, the Palestine Order in Council of that same year provided that "*all persons ... shall enjoy full liberty of conscience and the free exercise of their forms of worship, subject only to the maintenance of public order and morals.*" It also lays down that "*no ordinance shall be promulgated which shall restrict complete freedom of conscience and the free exercise of all forms of worship.*"¹ These provisions of the Mandate and of the Palestine Orders in Councils have been recognized in the Israeli legal system and are instructive of Israeli policy in safeguarding freedom of conscience and religion.

Israel's Declaration of Independence, promulgated at the termination of the British Mandate in 1948, is another legal source that guarantees freedom of religion and conscience, and equality of social and political rights irrespective of religion. Although the Declaration itself does not confer any legally enforceable rights, the High Court has held that "*it provides a pattern of life for citizens of the State and requires every State authority to be guided by its principles.*"²

To support the fundamental existence of the right of freedom of conscience and religion, the courts have also relied on the fact that Israel is a democratic and enlightened state. In one significant court decision, Justice Moshe Landau stated:

*"The freedom of conscience and worship is one of the individual's liberties assured in every enlightened democratic regime."*³ In dealing with questions of religious freedom, as well as other human rights, the courts have also resorted to the Universal Declaration of Human Rights and the International Covenant on Political and Civil Rights that reflect *"the basic principles of equality, freedom and justice which are the heritage of all modern enlightened states."*⁴ In doing so, the courts have required that two conditions be met: that the principle in question is common to all enlightened countries, and that no contrary domestic law exists. In this regard, Justice Haim Cohn has said:

*"It is decided law that rules of International law constitute part of the law prevailing in Israel insofar as they have been accepted by the majority of the nations of the world and are not inconsistent with any enactment of the Knesset (Parliament). The principles of freedom of religion are similar to the other rights of man, as these have been laid down in the Universal Declaration of Human Rights, 1948, and in the Covenant on Political and Civil Rights, 1965. These are now the heritage of all enlightened peoples, whether or not they are members of the United Nations Organization and whether or not they have as yet ratified them. . . for they have been drawn up by legal experts from all countries of the world and been prescribed by the [General] Assembly of the United Nations, in which by far the larger part of the nations of the world participates".*⁵

Justice Landau also emphasized the right of freedom of conscience:

*"Every person in Israel enjoys freedom of conscience, of belief, of religion, and of worship. This freedom is guaranteed to every person in every enlightened, democratic regime, and therefore it is guaranteed to every person in Israel. It is one of the fundamental principles upon which the State of Israel is based This freedom is partly based on Article 83 of the Palestine Order in Council of 1922, and partly it is one of those fundamental rights that "are not written in the book" but derive directly from the nature of our state as a peace-loving, democratic state⁶' On the basis of the rules and in accordance with the Declaration of Independence every law and every power will be interpreted as recognizing freedom of conscience, of belief, of religion, and of worship"*⁷.

Israel's Supreme Court has not yet ruled squarely on the issue of the protection of religious liberty under the Basic Law: Human Dignity and Liberty. However, several decisions and other writings by some of the Justices indicate support for the view that the general right to human dignity protected by the Basic Law includes, *inter alia*, freedom of religion and conscience, which consequently has the status of a supreme, constitutional legal norm.⁸ Thus, for example, during the Gulf War, the Supreme Court ruled that when supplying gas masks, the government should endeavor to supply special masks for religious men who maintain beards out of religious conviction.

The Basic Law: Human Dignity and Liberty refers to a "Jewish and democratic State". However, Judaism has not been proclaimed the official religion of Israel. Rather, the law and practice in Israel regarding religious freedom may best be understood as a sort of hybrid between non-intervention in religious affairs, on the one hand, and the inter-involvement of religion and government in several forms on the other, most notably by legislation establishing the jurisdiction of religious courts of the different faiths in specified matters of "personal status" by government funding of authorities which provide religious services to several of the religious communities; and by a series of legal institutions and practices which apply Jewish religious norms to the Jewish population.

Israel protects the freedom of Jews and non-Jews alike to engage in their chosen form of religious practice or worship. Likewise, in most cases the application of religious precepts by institutions of the State, such as in the prohibition of work on religious days of rest, does not compel Jews or non-Jews to violate the precepts of their chosen faith. However, freedom of religion is not an absolute right, but rather is subject to limitations and derogation. Thus, freedom of religion must be balanced with other rights and interests, and may be restricted for reasons of public order and security. In practice, however, Israeli authorities have exercised their power with great caution.

Religious institutions in Israel enjoy wide state financial support, in the form of both direct funding and tax exemptions. Both forms of state support are not uniform with regard to the various religious communities. However, the lack of official recognition of religious communities does not affect the ability of these communities to practice their religion freely or to maintain communal institutions. Furthermore, in its endeavor to enhance freedom of religion, Israel has permitted its Muslim citizens, by arranging for them to bear Jordanian travel documents, to pass through countries that do not have relations vis-à-vis Israel, in order to fulfill their commandment of pilgrimage to Mecca. Similarly, leaders of some of the Christian communities in Israel are also leaders of Christian communities in Arab countries; Israel, for its part, consistently maintains a policy of not intervening therein, allowing visits by religious figures across the border to enable these communities to manage their affairs.

Many provisions of Israeli statutory law are devoted to the protection of holy places and sites that serve for prayers and, other religious purposes.⁹ It is an offense under penal law to cause damage to any place of worship or to any object sacred to any religion with the intention of affronting the religion of any class of persons. There are, for example, penal sanctions for trespass on places of worship and burial, for indignity to corpses, and for disturbances at funeral ceremonies. The Supreme Court has dealt very stringently with acts which offend religious sentiment.

2. Religion-State Relationship and Freedom of Religion

The prevailing view in comparative international law is that the establishment of religion and its recognition by the state, or the separation of religion from the state do not, as such, violate religious freedom or constitute unlawful discrimination for religious reasons or religious intolerance. The nature of the regulation matters and the measure of statutory protection of

religious freedom do not vary with states where separation exists or where there is a state-recognized religion.

Many countries, which separate church and state nevertheless grant exemptions from certain legal duties such as military service on grounds of religious beliefs, while other countries, which have a state-established religion, do not. The relationship between church and state has no significant effect on the free exercise of religion and, thus, the International Draft Convention on the Elimination of All Forms of Religious Intolerance provides that neither the establishment of a religion, nor the separation of church from state, in and of itself, is an interference with the freedom of religion, unlawful discrimination on religious grounds or religious intolerance.

Of course, if in consequence of the state's recognition a particular religion or its adherents are given preferential treatment over other religions or over persons who are not members of it, this involves an infringement of the principle of religious freedom, which requires the equal treatment of all religions. The same applies where the separation of religion and the state lead to preferential treatment of people with no religion, or disbelievers, as against others.

It should be noted that, irrespective of state recognition of a particular religion, the religious beliefs of the majority of the population inevitably affect the life of the state. In the United States, for instance, this phenomenon is reflected in the prescription of Sunday as the weekly day of rest. By contrast, in Israel it is Saturday, and the Jewish festivals are also rest days. (The right is reserved to non-Jews to choose the rest day customary among them.) In Israel, the phenomenon is also manifested in the status enjoyed by the Chief Rabbis.

a. Conceptual and Comparative Analysis

The relationship between state and religion can be reflected in different forms. We can divide these forms into five models: the theocratic model, the absolute-secular model, the separation of state and religion model, the established church model, and the acknowledged religions model.

Two of these mentioned models are non-democratic: the theocratic model and the absolute secular model, which are the most extreme models.

A modern theory of law and government rejects these sorts of non-democratic models. The democratic state must promise and preserve the freedom of religion, which is defined as the freedom of any religion to maintain its religious activity and the freedom of any person to maintain his faith and religion and to fulfill its commandments and rituals¹⁰. Another right that a democratic state must promise is the freedom from religion, which is the freedom of any person *not to* fulfill the commandments of the religion. The private person is not obliged to any religious duty, religious institute, or religious ritual, he is free of any religious restriction, and he has every right of speech, belief and equality in front of the law.

The foundation of the democratic state is a secular law: the law that rules is the secular law, which had been accepted and determined in a democratic way by a legislation in a democratic parliament and which does not contradict to the principles of *the* democracy¹¹.

The first democratic model is the separation of state and religion model. The idea is that there is a distinction between the government and religious principles.

The second model is the established church model, which means that the state recognizes a certain religion and a certain church as the state's national church. This recognition does not mean that other religions are prohibited or that a person must be a member of the established church, but that the state formally prefers a certain religion and gives it a priority over other religions. It can be expressed in the state's financial support to institutions of this religion, in benefits given to the members of this religion, etc.

Examples for states that adopted this model are: England (the Anglican Church is the Church of England); Denmark, Norway, Iceland, Finland (the Anglo-Lutheran Church); Greece and Bulgaria (the Eastern Orthodox Church).

The third democratic model is the acknowledged religions model. The state in this model does not recognize one formal religion; a formal national state's church does not exist. The state's approach in the matters of state and religion is a neutral approach.

The United States of America adopted the separation of state and religion model, and, in fact, the U.S. is the common example for this model. The first amendment of the federal constitution held that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof". Literally, this clause does not constitute a regime of separation. However, this section was interpreted as the adoption of the separation model. The interpretation was based on two important parts of the section: the Establishment Clause and the Free Exercise Clause.

It should be mentioned that the fact that the United States adopted the separation method does not mean that the approach toward the religion is hostile. On the contrary, the American society is very religious, and anti-religious groups are considered marginal.

The religiousness of the American society can be found in all areas of life, for example: some of the formal holidays are Christian, and in Good Friday the flag is lowered to the memory of Jesus' crucifixion; the words "In God We Trust" are written on every currency and every bill; the oaths of trust of the President, Ministers, judges and Congress members conclude with the words "So Help Me God"; Congress meetings begin with a prayer; Priests and Rabbis serve in the army; and churches are released from paying taxes.

An analysis of all of these religious characteristics reveals that state religiousness is mostly not of a specific religion, but rather a reflection of the faith in one god [and not particularly in Jesus]. This is a kind of a new religion, a "civil religion" that contains components of many different religions, although it is closer to Christianity than to any other religion¹².

Allegedly, this religiousness of the society contradicts the separation principle, or at least the aim of the separation. But, in fact, there is no conflict between those two principles. The separation's aim is to ensure that the pluralism of religions and views is respected and preserved.

England, on the other hand, adopted a different answer to the question of the link between state and religion: the Established Church Model.

The King (or the Queen) is the head of the Established Church, and he must be Anglican in order to rule the kingdom. He cannot convert his religion. In his Coronation Oath, he pledges to maintain the Protestant Reformed Religion established by the law¹³, and to declare himself as the "Defender of the Faith", which is the Protestant-Christian Faith.

The acknowledgment and support of the state in one formal religion can be illustrated in many other examples: the Established Church organizes the formal state ceremonies, such as the Monarch coronation ceremony or requiem ceremonies for soldiers who died in a war; twenty-six of the senior bishops, including the archbishops of York and Canterbury, sit in the House of Lords as "Lords Spiritual"; all the measures of the Established Church, which are accepted by the General Synod (the general assembly of the church) must get the confirmation of the Parliament; the Book of Common Prayer was confirmed by the Parliament¹⁴; and the Monarch appoints the archbishops and bishops at the recommendation of the Prime Minister. Another example is the Law of Blasphemy, which holds that "to reproach the Christian Religion is to speak in subversion of the law"¹⁵.

b. Religion and State in Israel

When Benjamin Ze'ev Herzl dreamt about the state of the Jewish nation, he had the vision of separation of state and religion¹⁶. However, this vision has not become the reality. There is no separation of religion and state in Israel. At the same time, there is no recognized religion in the accepted sense. Some have argued that the peculiar nature of Judaism, which embodies a pattern of daily life and not merely a set of religious dogmas, and which intermingles religious and national elements, is not conducive to separation of religion and state. As David Ben-Gurion puts it, "*The convenient solution of separation of church and state, adopted in America not for reasons which are anti-religious but on the contrary because of deep attachment to religion and the desire to assure every citizen full religious freedom, this solution, even if it were adopted in Israel, would not answer the problem.*"¹⁷

The State of Israel recognizes the following religions: Jewish, Christian, Muslim, Druze and Baha'i. Within the Christian religion the following denominations are recognized: Greek Orthodox, Greek Catholic, Latin (Roman Catholic), Armenian Orthodox, Armenian Catholic, Maronite, Syrian Orthodox, Syrian Catholic, Chaldaic (Catholic) and Evangelical Episcopal (Anglican).

Three denominations have applied for State recognition: the Ethiopian Orthodox, the Coptic Orthodox and the United Churches Council of Israel, which is the umbrella organization of Protestant churches in Israel. Their applications are still pending. In the past, three other applications, those of the Druze, the Baha'i and the Evangelical-Episcopal, were accepted.

Apart from the peculiar nature of Judaism, there is the difficulty attending separation, which flows from the approach of the law in Israel to matters of personal status. This approach,

predating the establishment of the state, rests on religious affiliation, religious law, and religious jurisdiction.

The integration of religion and state in Israel is visible in many fields, some expressly regulated by statutory law¹⁸ and some relying on a legal regulation. Among them are the application of a religious test to the Law of Return¹⁹, which provides for automatic Israeli citizenship to Jews wishing to reside permanently in Israel; the exclusive application of religious jurisdiction and religious law in matters of marriage and divorce²⁰; the conduct of religious education financed out of state funds²¹; and the establishment of a special Ministry of Religious Affairs²².

3. Role of Religious Norms

The most difficult problem relating to religious liberty in Israel is posed by the imposition of religious norms and restrictions of a religious nature on all Jews, whether or not they are religiously observant.

To determine whether the enforcement of a norm of religious origin infringes freedom of conscience and religion, a distinction must be drawn between a norm of religious origin which is not generally recognized and adopted by the society, and one which is. The enforcement of a norm of the first type such as the application of religious law in marriage and divorce involves a violation of religious liberty; the enforcement of a norm of the second type such as the prescription of a day of rest does not, for in that case the enforced norm is treated like any norm, regardless of source, which has been accepted by society, and which the state may enforce through legislation. As Justice Simon Agranat, the President of the Supreme Court, has observed:

"This opinion involves the much-debated issue of whether the state may legislate morality or compel a moral norm. With regard to Jewish law, Justice Landau has proposed to distinguish between 'rules which prescribe man's behavior to his fellow man, and those which affect the relationship between man and Divinity.'²³ On this view, coercion of the former upon nonbelievers does not derogate from freedom of conscience and religion. The difficulty I find with this distinction is that it implies that there would be nothing wrong with the enforcement of conduct, religious in origin and in substance, provided only that it concerns human relations."

Justice Moshe Silberg has distinguished between the "rational" and the "credal" commandments of Judaism.²⁴ While the former may, in his opinion, rightly be enforced on the public without prejudicing religious freedom, the coercion of the latter does not offend against that freedom. Again, I cannot agree with this distinction. That a religious norm is rational does not justify its compulsion until it has won the social approval required to render it a norm binding upon society. It is possible also for such societal approval to be gained by credal norms.

Israeli law, at present, provides examples of coercion of religious law that are not accepted norms within Israeli society. The application of Jewish law to marriage and divorce, and the subjection of citizens and residents to the exclusive jurisdiction of the religious courts in such matters, is an improper coercive enforcement of a religious norm. And the very necessity to marry before a religious authority results in a number of restrictions of wider ambit. A woman who has left the faith loses property rights. The marriage of a Cohen, a man whose descent is

traditionally traced to the ancient priesthood and a divorcee is forbidden. None of these matters are to be found in any statute.

a. The Secular Primary-Purpose Test

In legal terms, the difference between religious norms, which are not part of the societal consensus, and norms with religious roots, which have been adopted by the society, assumes the form of the secular primary-purpose test. If the primary purpose meant to be served by the law is secular that is to say, is acceptable to enlightened members of society no improper coercion is involved, even if a religious purpose is incidentally served. For instance, the designation of Sunday as the general day of rest in the United States would prima facie constitute the coercive enforcement of a Christian religious norm on the entire population, but since the primary purpose is a secular one, the incidental result of enforcing a religious norm does not invalidate such a law.

The secular primary-purpose test is acceptable to the courts in Israel, whether or not they apply it explicitly. Justice Silberg has held that where a religious purpose is not primary to a law but the provisions of that law can be justified by the secular purpose achieved, no infringement of religious freedom occurs, even if the statutory provision also serves some religious purpose.²⁵ And Justice Zvi Berinson has held that the fact that a municipal bylaw, dealing with the opening and closing of businesses, accords with religious demands will not invalidate all or any part of it "*if the primary purpose sought to be achieved by means of it is not a religious purpose.*"²⁶

A legislative or administrative act serving a religious purpose, if effected by an administrative authority, possesses force only on the condition that the religious purpose is incidental or marginal to the secular primary purpose. Thus, the Israeli Supreme Court has decided that the introduction into an import license of a condition whereby the importer of food must produce a certificate of kashrut from the Rabbinate to obtain clearance of the goods from customs does not serve the economic purposes of the law restricting imports. Therefore, the court found that the authority, in imposing such a condition, had improperly exercised its powers in order to attain a religious purpose.²⁷ Similarly, the Supreme Court has denied validity to an order of the Food Controller that prohibited the breeding of pigs in certain areas by virtue of his general power to regulate the inspection of food. In its ruling, the court noted that "*the sole firm grounds, or at least the primary and decisive grounds, for the Food Controller's administrative and legal acts in this matter were national-religious and not economic grounds inherent in the purposes of food control.*"²⁸

b. Cultural-Religious Norms

A special problem arises with what are termed in Israel cultural or national-religious norms. Certainly, religious freedom is consistent with the imposition of national or cultural norms that bind a society to its historic values and cultural heritage. The intermingling of national and religious elements in Judaism requires, however, that a distinction be drawn between purely religious norms and norms which display national features.

National-religious norms are enforceable upon individuals only when they have secured societal consensus. However, their introduction into official state institutions may be warranted, even when their enforcement upon the individual citizen is not justified. Thus, the State of Israel may properly require that Jewish symbols and values should be preserved by governmental authorities and the official representatives of the state in the course of their duty even though these may lack the consensus which would transform them into norms binding on all citizens. Analogously, it is my view that the observance of the dietary laws in the army is justified, not because military standardization and national unity make it undesirable to set up two kitchens in every army unit or because there is no hardship involved in non-observant soldiers eating kosher food while the alternative policy creates severe hardship for many soldiers. The observance of the dietary laws in the army can be justified on the ground that it forges a bond with the past of the Jewish people by means of one of the most conspicuous of Jewish symbols.

In Israeli law, religious matters are regulated only by the national legislature. In the absence of specific legislation, there is no warrant for the enforcement of any religious norm by the executive branch of government. But, in contradistinction to the enforcement of religious norms, governmental administration may, within the scope of its general authority, include religious considerations along with others in the regulation of public life. Such is the case, for example, in ordering the closure, during the hours of prayer, of a section of road adjoining a synagogue. The court held that "*in attaching some value to the consideration that motor traffic along the roads concerned on a Jewish festival and the Sabbath disturbs worshippers during their prayers in the Yeshurun Synagogue and prevents them from praying in tranquility, [the Traffic Controller] gave thought to an interest of a religious character. However, this does not invalidate his decision, just as it would not be invalid had he had in mind some cultural, commercial, health or other like interest.*"²⁹ Consideration of interests having a religious character is justified "*provided they affect an appreciable part of the public*" and do not impose a "*burden which cannot be borne.*"³⁰ The justification for taking account of religious considerations and interests derives, as has been suggested, from the fact that they fall into a wide category of matters which may properly be given consideration for the purpose of exercising authority.³¹

4. Recent Changes in the Protection of Religious Liberty: The New Era of Basic Laws

a. The Basic Laws

The positive contribution of the legislature is significantly reflected in the passage of two new Basic Laws Basic Law: Human Dignity and Liberty, and Basic Law: Freedom of Occupation.³² The uniqueness of these Basic Laws is in the legislation of certain human rights within a Basic Law, which places limits on future Knesset legislation by means of the law's restrictive clause. As such, the Basic Law reduced the ability of religious factions in the coalition to push through laws bypassing the High Court of Justice. Even those rights that are not explicitly mentioned in the Basic Laws are safeguarded, due to the broad interpretation of the catch-all concept of "human dignity" in the Basic Laws. Religious freedom is also included in the category of human dignity. As stated by Justice Aharon Barak: "*In the past, freedom of worship and religion did not enjoy a supralegal constitutional status. With the passage of the Basic Law: Human Dignity and Liberty, it includes implied recognition of human dignity.*"³³

The solution to the dilemma faced by religious groups following the passage of the Basic Laws and its near-neutralization of any contradictory legislation, was found in the amendment to the Basic Law: Freedom of Occupation, in the Mitral case.³⁴ This amendment added section 8, which enables the legislature to pass a law that impairs rights that are accorded by the Basic Law: Freedom of Occupation, explicitly or implicitly, without conforming with the strictures of the restrictive clause. The law had to be passed by a majority of 61 Knesset members, and had to contain this rider: "*in spite of that which is stated in Basic Law: Freedom of Occupation.*" This amendment led to the adoption of the Import of Frozen Meat Law, 1994.

Passage of the amendment to the Basic Law: Freedom of Occupation constitutes a step back from the passage of the two new Basic Laws. It resulted from the government's desire to appease the religious elements in the Knesset. In addition, prior to the passage of the Basic Laws, there had been a general policy not to allow the import of non-kosher frozen meat, and the new legislation restored the *status quo ante*.

Ultra-Orthodox circles have dissociated themselves from all Basic Law legislation. They are disturbed by the passage of the Basic Laws and the implications of those laws, and are discomforted by references to the importance of rights guaranteed by the Basic Laws and their effect on existing arrangements in matters of religion. During political negotiations, these circles habitually seek commitments for legislation to nullify judicial decisions that are based on the existing law. In the Velner case, for instance, a coalition agreement was signed between the Labor party and the Shas movement, according to which the Labor faction in the Knesset would work for corrective legislation that would restore the legal situation to its previous status. This coalition demand came in response to the corpus of judicial rulings handed down by the High Court of Justice on matters of religion.³⁵

b. Impact of the judicial rulings of the Supreme Court on the Protection of the Freedom of Religion

Analysis of the measure of protection of civil rights in matters of religious practice indicates that the judicial branch, and first and foremost the Supreme Court, has been the chief contributor over the years toward the enhancement of the quality of civil rights in matters of religious practice in the State of Israel. The judicial rulings of the Supreme Court, primarily in its capacity as the High Court of Justice, are the outgrowth of processes that have been underway in Israeli society over the years, which modified patterns of public behavior in various areas. In the wake of these changes in society, petitions were brought before the Supreme Court by public groups and private citizens. These petitioners have played an important role in enhancing civil rights in matters of religious practice, for it is due to their intervention that the various issues were brought before the High Court of Justice, providing the court an opportunity to give these positive social developments a judicial seal of approval. The dynamic process of providing judicial approval of social processes that enhance civil rights in matters of religious practice applies not only to the High Court of Justice but also to the judicial decisions handed down by the courts and the Supreme Court in civil and criminal actions.

There are numerous examples of favorable judicial rulings by the Supreme Court that have contributed toward enhancement of civil rights in matters of religious practice, in light of

processes underway in Israeli society. For example, the court has recognized marriages of Israeli residents performed abroad as well as private ceremonies of individuals forbidden to marry;³⁶ the court ruled that issuance of kashrut certificates by the Chief Rabbinate would be carried out solely in accordance with the "hard core" of the halachic laws; and the court struck down municipal bylaws that forbade the sale of pork.³⁷ The Supreme Court also recognized the right to alternative burial, years before the Knesset set this right into law.³⁸ The Supreme Court was also responsible for clarifying that the Chief Rabbinate and its associated bodies, including religious court judges and rabbinical courts, are public bodies that are subject to the rule of law and the judicial review of the High Court of Justice.³⁹ In the Kaplan case, the Supreme Court ruled that public television could operate on the Sabbath.⁴⁰ It developed that the Supreme Court also played a primary role in defending the status of female members of public religious bodies.⁴¹

In spite of the generally positive trend whereby Supreme Court rulings enhanced the quality of civil rights in matters of religious practice, there are also cases in which the Supreme Court hesitated to intervene, preferring to leave the decision in the hands of other bodies. One example is the issue of conversion. When the question of recognition of Reform conversion performed in Israel was brought before the High Court of Justice, a majority of the justices preferred to defer the ideological task of determining the sum and substance of conversion in Israel.⁴² Another example of the Supreme Court's hesitancy to rule on issues pertaining to rights in matters of religion is the Bar-Ilan Street case. As noted, the Supreme Court at first avoided ruling on the matter, instead recommending the establishment of a public committee to study the issue.⁴³

As a continuation of this trend, the Supreme Court also avoided handing down any clear decision on the issue of drafting yeshiva students, when the question again came up before it in 1997.⁴⁴ The Supreme Court justices determined that the present-day arrangement was unreasonable, but they avoided taking the next step of declaring the arrangement null and void. They sufficed by allotting the Knesset one year's time to enact appropriate legislation on this matter, in contrast to the existing situation in which draft exemptions for yeshiva students are regulated by an administrative decision made by the defense minister.

5. State Funding of Religious Institutions

Governmental funding for religious institutions has different sources within the government. Various ministries provide this financial support, including the Ministry of Religious Affairs, the Ministry of Education, the Ministry of Internal Affairs, the Ministry of Labor and Social Welfare, and other ministries that allocate budgets for specific issues, that eventually contribute to the development of those religious institutions.

The main supporter, however, is still the Ministry of Religious Affairs, whose budget is mostly designated for the ultra-orthodox (*Haredi*) educational and social services, the religious educational institutions (*yeshivot*), religious youth movements, the religious culture institutions (which are institutions that hold Torah lessons for the ultra-orthodox public) and the religious research institutions⁴⁵. A much smaller part of the Ministry's budget is designated for services to the whole public, such as synagogues or mosques, the Chief Rabbinate, the religious courts and development of cemeteries of all religions. It should be mentioned that the religious education system is supported also by the Ministry of Education.

In the past, the government included in the Budget Law a list of the sums allocated to religious institutions by name. This grant system created a great controversy, raised severe political criticism, and therefore was changed by an amendment to the Budget Foundations Law. The amendment provided that the Budget Law would provide for an inclusive sum of support for every category of public institutions, which would be equally distributed to all institutions included in that same category⁴⁶. Although the amendment apparently aimed at achieving a fair and equal allocation, actually the equal distribution was not achieved. The government could continue the discrimination of different public institutions, and could grant greater allowances to religious education institutions (*yeshivot*). The discrimination was still possible due to the formulation of the law; the equal allowance duty applied only to the institutions in the same category, and the government was not obliged to equality of different categories. Another deviation from the equality principle was the fact that an explicit section of the law excepted two institutions ("The Independent Education System of the Ashkenazi" and "The Sephardi Centre of Fountain of Religious Education in Israel"), which are religious *Haredi* education networks, and allowed the government a large support for them. They have become much bigger educational systems as a result of the big budgets they get from state sources. They offer education for lower or no fees, though they do not have a high quality education.

The system of distribution of funds was challenged in the Court. An association named *Ma'ale* appealed to the Supreme Court after its request for allocations had been denied⁴⁷. This association was a non-profit organization whose activity focused on "organizing and maintaining religious services by combining the Torah of the Israeli people, the Israeli nation, the land of Israel and the State of Israel". It requested allocations by virtue of the budget section that was concerned with cultural activities for the *Haredim*. The Supreme Court dismissed the petition. Justice Barak (now the President of the Supreme Court) reviewed the legal arrangement and decided that it is valid. The law, according to his reasoning, properly expressed the principle of equality in distribution of allowances and in the authority's duty to act according to equality and reasonable guidelines and clear, relevant and equal criteria. I respectfully disagree with this approach. In his opinion, Justice Barak failed to examine the actual discrimination in the allowances' distributions and the priority that was clearly given to the categories including the *Haredi* institutions⁴⁸. He also dismissed the arguments of *Ma'ale* association, by determining that the association is not a *Haredi* one⁴⁹, and therefore is not allowed to receive the allocations.

The question was raised again in 1995, when the State Auditor Report was published⁵⁰. The report showed that the Amendment to the Budget Foundations Law had not solved the serious disorders in the field of financial support given to religious institutions. The Ministry of Religious Affairs could still support "preferred" institutions, motivated by political considerations, in the disguise of legal equal criteria. The Report described and criticized serious violations and disorders in the allocation system. For example, the Ministry paid for various organizations for their activity despite the fact that it was clearly known that these organizations' reports had been false. In many cases, the Ministry disregarded the fact that organizations had not fulfilled the required terms. Another violation was the fact that the Ministry ignored the finding of its own internal audit unit. Even when the Ministry found there had been almost no activity in the institutions of the organizations that requested support, the Ministry supported them. The report found that the Ministry had failed in its duty as a public trustee and as responsible party for public funds and their fair and equal distribution⁵¹.

At that time, this author was appointed as Minister of Religious Affairs. I decided to set up a public committee, headed by Professor Avraham Friedman, to review the appropriate criteria for financial support of the Ministry. Another decision was to cut off immediately the support until the committee had published its Report. The Committee's Report was published in August 1995⁵².

6. State and Religion in Israel: Challenges and Problems

The population's religious needs are supplied by authorities established by law (the religious councils)⁵³, budgets are allocated for religious purposes, and there is a Minister of the Cabinet responsible for religious affairs. The religion's involvement in the state's matters is expressed, for example, in the fact that kosher food is by law provided in IDF (Israeli Defense Forces), and in the government facilities, and special orders in the matters of religion were set in the IDF.⁵⁴ Many laws are of religious nature, such as the laws limiting the raising of swine, or the laws forbidding the public showing of leaven (*hametz*) in Passover⁵⁵.

This situation causes a continuous debate. There are scholars who claim that the lack of separation results in the absence of "freedom from religion", which is, as described above, a fundamental value in a democratic state, and in the system of fundamental civil rights.

Thus, every citizen in Israel is subject to the authority of religious institutions in matters of marriage and divorce even against his will⁵⁶. There is no civil alternative for religious marriage. The situation creates difficulties, especially when religion forbids the marriage of a couple (such as in the case of a divorced woman and a *Cohen*), but also in the case of a secular couple that refuses to marry in a religious ceremony⁵⁷. This legislature's choice of an exclusive form of religious marriage violates freedom of marriage, but also freedom from religion, because it obliges the couple to get the services of a religious agency in its most intimate hour⁵⁸.

Another example of the deprivation of the freedom from religion which results from the lack of separation, can be found in the subject of the "Sabbath" (Saturday) the day of rest, and especially concerning the issue of opening businesses on the Sabbath. Until 1990, the law authorized the municipalities to regulate the opening and closing of shops, workshops, cinemas and other places of public entertainment and to decide the opening and closing hours on holidays⁵⁹. According to this law, many municipal bylaws were enacted, which forbade the opening of businesses on the Sabbath⁶⁰. This bylaw was reviewed in the court⁶¹ and was declared void, because it limited the freedom of religion (which also includes the freedom not to believe); this limitation can only be effected by the authorization of the legislature (the Knesset). In response to this decision, the Government, which was supported by a coalition composed also of religious parties, advanced an amendment to the Municipalities Ordinances, that in fact reversed the court's decision, and allowed the municipalities to forbid businesses' opening on the Sabbath⁶². This development in the law has shown that the lack of separation between law and religion enables the legislature, influenced by political considerations to command the support of the religious parties in the Knesset to diminish the civil rights and freedom from religion.

1 See Articles 2, 13-18 of the Mandate for Palestine, and Articles 83 and 17 (1) (a) of the Palestine Order in Council of 1922.

2 H.C. 262/62, *Perez v. Kfar Shmaryahu Local Council* 16 Piskei Din 2101, 2116 (per Justice Summon).

3 Cr. A. 112/50, *Yosifof v. Attorney General*, 2 Piskei Din 486, 598, 612 (per Justice Landau).

4 H.C. 301/63, *Streit v. Chief Rabbi*, 18(1) Piskei Din 598, 612.

5 H.C. 103/67, *American Orphan Beth El Mission v. Minister of Social Welfare*, 21(2) Piskei Din 325.

6 Justice Landau in H.C.243-62, *Filming Studios in Israel Ltd. V. Guery et al.*, 16 P.D., p.2407

7 Justice Zamir in H.C.7128/96, *Movement of the Faithful of the Temple Mount et al. v. Government of Israel et al.*, Takdeen-Elyon, 97(1), 5757/5758-1997, p.480

8 H.C.J. 501/96 *Horev v. Minister of Transportation* (97 Takdin 421, (1997)), H.C.J. 5394/92, *Huppert v. "Yad Vashem"*, 48(3) P.D. 353.

9 E.g., Section 3 of the Local Authorities (Vesting of Public Property) Law, 1958, excludes property used for religious purposes and services from that which a local authority is empowered to acquire compulsorily for public purposes.

10 See: B. Neuberger, **Religion and Democracy in Israel** (1997), 16 (Hebrew). The freedom of religion will be limited only when the fulfillment of the religious commandments would result in violence, in breach of the public order, or in deprivation of civil rights.

11 See: B. Neuberger, **Religion and Democracy in Israel** (1997), 17 (Hebrew).

12 See: E. Gutmann "Links between Church and State in the Democratic West" in: D. Arieli-Horvitz (ed.) **Religion and State in Israel** (Jerusalem, the Center of Pluralist Judaism) 7-20.

13 Coronation Oath Act, 1688

14 In 1588, 1662, 1872, 1990 and 1994- see: Cumper (1996) pp. 28.

15 See: R. Post "Blasphemy, the first amendment and the concept of intrinsic harm" 8 *Tel Aviv University Studies in Law* 293-324 (1988).

16 See: A. Rubinstein, "State and Religion in Israel", *J. of Contem. History*, Vol. 2 No. 4, p. 107, at p. 108 (1969).

17 *Nezah Yisrael*, 154-55.

18 Such as the expression "Jewish and democratic state" in: Basic Law: Human Dignity and Liberty (1992), s. 1A; Basic Law: Freedom of Occupation (1994), s. 2. ; These laws are relatively recent, but the principle of a Jewish state existed from the day of the establishment of the State, in the Declaration of Independence, and later in various judgments. See for example: Elections Appeal 1/65 *Yardor v. The Chairman of the Election Committee*, 19(3) P.D. 365.

However, there is the claim that the expression "Jewish" refers to the cultural and historical belonging, and has no direct connection to the Jewish religion. see : See: R. Gavizon, " Religion and State: Separation and Privatization", 2 *Mishpat v' Mimshal* (1994) 55, at 57 (Hebrew). About the "Jewish" term see: A. Maoz "The Rabbinate and the Courts: Between the hammer of law and the anvil of ' Halakah' " 16-17 *Hebrew Law Yearbook* (1991) 289, 308 (Hebrew); "The Role of Religion in Public Debate in a Liberal Society" 30 *San Diego L. Rev.* (1993) 643. There is a common claim that the Jewish values (that The Justice Foundations Law refers to) are broad enough to include all matters that seem related to our culture and heritage. In this context see: H. Cohen "The Law of Remnant" 13 *Hebrew Law Yearbook* (1987) 285, 300; A. Barak, *Commentary in Law*, (1992, Vol. I) 528-529.

19 The Law of Return (1950).

20 The Rabbinical Courts Adjudication Law [Marriage and Divorce] (1953); Also see: P. Shifman "State Recognition of Religious Marriage: Symbols and Content" 21 *Isr. L. Rev.* 501 (1986).

21 State Education Law (1953); see: S. Goldstein "The Teaching of Religion in Government Funded Schools in Israel" 20(1) *Isr. L. Rev.* 36-64 (1992).

22 Further see: The Religious Councils Act by the Jewish Religious Services Law (1949).

23 H.C. 51/69, *Rodnitzki v. Rabbinical Court of Appeal*, 24(1) *Piskei Din* 704, 712.

24 Cr. A. 217/68, *Izramax v. State of Israel*, 22(2) *Piskei Din* 343, 354 et seq.

25 In Cr. A. 217/68, *Izramax*, 353, Justice Silberg sums up the secular primary-purpose test adopted in the United States.

26 Cr. A. 217/68, *Izramax*, 362

27 H.C. 231/63, *Retef Ltd. v. Minister of Commerce and Industry*, 17 *Piskei Din* 2730.

28 H.C. 105/54, *Lazarovitz v. Food Controller*, 10 *Piskei Din* 44, 55, per Justice Berinson. It may be contended, however, that prohibition of pig breeding in respect of Jews is warranted, because the entire matter is rooted in Jewish national tradition.

29 H.C. 174/62, *League for Prevention of Religious Coercion v. Jerusalem City Council* 16 *Piskei Din* 2665, 2668.

30 Cr. A. 217/18, *Izramax*, 362. Justice Berinson states: "As between one way of doing things in disregard of religious considerations and another way having regard for religious considerations but without placing upon the public too heavy a burden, the second is certainly to be preferred."

31 A similar reason serves in the United States to justify government acts supportive of religion. See P. Kurland in *Law and Religion* 18, 122 (1962).

32 (1992) *S.H.* no. 1387, p. 114 and no. 1391, p. 150. Regarding the way in which the new Basic Laws are being passed and the model of split legislation, see below.

33 Barak, *Interpretation in Law* Vol. 3: Constitutional Interpretation, 1994, p. 225, and Hillel Somer, "The Non-Enumerated Rights: On the Scope of the Constitutional Revolution" in *Mishpatim* (1997), vol. 28, pp. 324-326.

34 H.C. 397/88 *Menucha Nechona v. Minister of Religious Affairs* (not published).

35 H.C. 5364/94 *Attorney Ze'ev Velner v. "The Alignment" The Labor Party*, (1995) 49(1) P.D. 758.

36 State Comptroller, Annual Report for 1990, No. 40.

37 H.C. 117/55; 72/55 *Siegfried Avraham Fraidi v. Tel Aviv-Jaffa Municipality and others, Shmuel Mendelsson v. Tel Aviv-Jaffa Municipality*, (1956) 10(2) P.D. 734.

38 H.C. 397/88 *Menucha Nechona v. Minister of Religious Affairs* (not published).

39 H.C. 732/84 *Tzaban v. Minister of Religious Affairs*, (1986) 40(4) P.D. 141

H.C. 3269/95 *Katz v. Jerusalem Regional Rabbinical Court* (1996) 50(4) P.D. 590. The case involved the issue of a writ of denial by the rabbinical court against an individual who refused to have his civil matter be adjudicated by the rabbinical court in accordance with the terms of a complaint filed according to the Torah code

40 H.C. 708/69 *Adi Kaplan v. Prime Minister and Broadcasting Authority*, (1969) 23(2) P.D. 394.

41 H.C. 153/87 *Shakdiel v. Minister of Religious Affairs*, (1988) 42(2) P.D. 221.

H.C. 953/87 *Poraz v. Tel Aviv-Jaffa City Council*, (1988) 42(2) P.D. 309.

42 H.C. 1031/93 *Pissaro (Goldstein) v. Minister of the Interior*, (1995) 49(4) P.D. 661.

43 H.C. 5016/96, 5025/96, 5090/96, 5434/96, *Horev and others v. Minister of Transport and others*, (1997) 51(4), P.D.1.

44 H.C. 3267/97 *Rubinstein and others v. Minister of Defense* (1998) 52(5) P.D. 481.

45 For the numerical review, see: S. Shetreet, *The Good Land between Power and Religion* (Tel-Aviv, 1998), at page 230.

46 Budget Foundations Law (1985), sec. 3(a)(9), 3(a)(10). Note that the equality duty is explicit in the words of the law.

47 H/C 4346/92 *Ma'ale, the center of religious Zionism v. The Education and Culture Minister*, 46 (5) PD 590.

48 See: Y. Aviram "Religion and State in Israel- a Legal Review" in *State and Religion Yearbook* (1993) 124, at 130 (in Hebrew).

49 Because he defined, "Haredis" as Jews who keep the commandments, whose unity is the fact that they are religiously stricter in the matters of education, community character and lifestyle than other religious Jews.

50 The State Auditor, Annual Report no. 45 (The Governmental Printer, Jerusalem, 1995), at p. 236.

51 *Ibid*, at p. 261.

52 Amendment no. 10 of the criteria of the Ministry of Religious Affairs Allocating of Funds to Public Institutions, Y.P. 1995, 500.

53 The religious councils act under the Jewish Religious Services Law (1949). See: H/C 62/69 *Asraf v. Eilat's Religious Council*, 23(1) P.D. 655 and in this matter: S. Shetreet, *Freedom of Conscience and Religion: Theoretic Elements and the Situation in the Israeli Law* (1975), p. 106, at footnote 25 (Hebrew).

54 Such as orders that forbid entertainment activities that involve desecration of the Sabbath, the soldier's burial is a religious ceremony, etc.

55 Swine Growing Prohibition Law (1962) and the amendment to this law from 1990; Matzoth Holiday Law [Hametz Prohibition] (1986). In this subject of religious legislation see: A. Shaki "Religious Legislation- For and Against" 7 *Tchumin* (1986) 521-525 (Hebrew).

56 The Rabbinical Courts Jurisdiction Law [Marriage and Divorce] (1953) apply on all Jewish citizens and residents by the " 'Halachah' of Israel religious law criteria", even despite their will. About religious marriage see: P. Shifman "State Recognition of Religious Marriage: Symbols and Content", 21 *Isr. L. Rev.* 501 (1986).

57 In the matter of marriage and the democratic right for civil marriage and divorce, see: Y. Berlin, " The Judaism and Israel as a Democracy" *Secular Humanistic Judaism* (1988) 2, 4-7 (Hebrew).

58 See: P. Shifman, *Who is Afraid of Civil Marriage?* (Jerusalem, 1995) (Hebrew); S. Shetreet, "Freedom of Conscience and Religion: The Freedom from Coercion of Religious Norms, The Compulsory Recourse to a Religious Authority and Imposition of Religious Restrictions" 3 *Mishpatim* 467 (Hebrew).

59 The Municipalities Order, s. 249(20).

60 For Example, The Bylaw of Jerusalem (Businesses opening and closing), 1955.

61 Cr. P (Jerusalem) 3471,3472/87 *State of Israel v. Kaplan*, 1988(2) P.M. 265.

62 The Municipalities Order Amendment Law (No. 40), 1990. However, the municipalities usually do not force the law in this field, and by this allow the opening of cinemas and restaurants in Saturday. See: S. Shetreet, *Between The Three Branches of Government- The Balance of Rights in Matters of Religion in Israel*, (The Floersheimer Institute For Policy Studies, Jerusalem, 1998) at pages 25-26 (Hebrew).

IV. Treaties

- A. Fundamental Agreement, Israel-Holy See, 30 Dec. 1993, *available at* http://www.mfa.gov.il/MFA/MFAArchive/1990_1999/1993/12/Fundamental%20Agreement%20-%20Israel-Holy%20See.

FUNDAMENTAL AGREEMENT BETWEEN THE HOLY SEE AND THE STATE OF ISRAEL December 30, 1993

Preamble

The Holy See and the State of Israel,

Mindful of the singular character and universal significance of the Holy Land;

Aware of the unique nature of the relationship between the Catholic Church and the Jewish people, and of the historic process of reconciliation and growth in mutual understanding and friendship between Catholics and Jews;

Having decided on 29 July 1992 to establish a 'Bilateral Permanent Working Commission', in order to study and define together issues of common interest, and in view of normalizing their relations;

Recognizing that the work of the aforementioned Commission has produced sufficient material for a first and Fundamental Agreement;

Realizing that such Agreement will provide a sound and lasting basis for the continued development of their present and future relations and for the furtherance of the Commission's task,

Agree upon the following Articles:

Article 1

1. The State of Israel, recalling its Declaration of Independence, affirms its continuing commitment to uphold and observe the human right to freedom of religion and conscience, as set forth In the Universal Declaration of Human Rights and in other international instruments to which it is a party.
2. The Holy See, recalling the Declaration on Religious Freedom of the Second Vatican Ecumenical Council, 'Dignitatis humanae', affirms the Catholic Church's commitment to uphold the human right to freedom of religion and conscience, as set forth in the Universal Declaration of Human Rights and in other international instruments to which it is a party. The Holy See wishes to affirm as well the Catholic Church's respect for other religions and their followers as solemnly stated by the Second Vatican Ecumenical Council in its Declaration on the Relation of the Church to Non-Christian Religions, 'Nostra aetate'.

Article 2

1. The Holy See and the State of Israel are committed to appropriate cooperation in combatting all forms of antisemitism and all kinds of racism and of religious intolerance, and in promoting mutual understanding among nations, tolerance among communities and respect for human life and dignity.
2. The Holy See takes this occasion to reiterate its condemnation of hatred, persecution and all other manifestations of antisemitism directed against the Jewish people and individual Jews anywhere, at any time and by anyone. In particular, the Holy See deplors attacks

on Jews and desecration of Jewish synagogues and cemeteries, acts which offend the memory of the victims of the Holocaust, especially when they occur in the same places which witnessed it.

Article 3

1. The Holy See and the State of Israel recognize that both are free in the exercise of their respective rights and powers, and commit themselves to respect this principle in their mutual relations and in their cooperation for the good of the people.
2. The State of Israel recognizes the right of the Catholic Church to carry out its religious, moral, educational and charitable functions, and to have its own institutions, and to train, appoint and deploy its own personnel in the said institutions or for the said functions to these ends. The Church recognizes the right of the State to carry out its functions, such as promoting and protecting the welfare and the safety of the people. Both the State and the Church recognize the need for dialogue and cooperation in such matters as by their nature call for it.
3. Concerning Catholic legal personality at canon law the Holy See and the State of Israel will negotiate on giving it full effect in Israeli law, following a report from a joint subcommission of experts.

Article 4

1. The State of Israel affirms its continuing commitment to maintain and respect the 'Status quo' in the Christian Holy Places to which it applies and the respective rights of the Christian communities thereunder. The Holy See affirms the Catholic Church's continuing commitment to respect the aforementioned 'Status quo' and the said rights.
2. The above shall apply notwithstanding an interpretation to the contrary of any Article in this Fundamental Agreement.
3. The State of Israel agrees with the Holy See on the obligation of continuing respect for and protection of the character proper to Catholic sacred places, such as churches, monasteries, convents, cemeteries and their like.
4. The State of Israel agrees with the Holy See on the continuing guarantee of the freedom of Catholic worship.

Article 5

1. The Holy See and the State of Israel recognize that both have an interest in favouring Christian pilgrimages to the Holy Land. Whenever the need for coordination arises, the proper agencies of the Church and of the State will consult and cooperate as required.
2. The State of Israel and the Holy See express the hope that such pilgrimages will provide an occasion for better understanding between the pilgrims and the people and religions in Israel.

Article 6

The Holy See and the State of Israel jointly reaffirm the right of the Catholic Church to establish, maintain and direct schools and institutes of study at all levels; this right being exercised in harmony with the rights of the State in the field of education.

Article 7

The Holy See and the State of Israel recognize a common interest in promoting and encouraging cultural exchanges between Catholic institutions worldwide, and educational, cultural and research institutions In Israel, and in facilitating access to manuscripts, historical documents and similar source materials, in conformity with applicable laws and regulations.

Article 8

The State of Israel recognizes that the right of the Catholic Church to freedom of expression in the carrying out of its functions is exercised also through the Church's own communications media; this right being exercised in harmony with the rights of the State in the field of communications media.

Article 9

The Holy See and the State of Israel jointly reaffirm the right of the Catholic Church to carry out its charitable functions through its health care and social welfare institutions, this right being exercised in harmony with the rights of the State in this field.

Article 10

1. The Holy See and the State of Israel jointly reaffirm the right of the Catholic Church to property.
2. Without prejudice to rights relied upon by the Parties:
 - a. The Holy See and the State of Israel will negotiate in good faith a comprehensive agreement, containing solutions acceptable to both Parties, on unclear, unsettled and disputed issues, concerning property, economic and fiscal matters relating to the Catholic Church generally, or to specific Catholic Communities or institutions.
 - b. For the purpose of the said negotiations, the Permanent Bilateral Working Commission will appoint one or more bilateral subcommissions of experts to study the issues and make proposals.
 - c. The Parties intend to commence the aforementioned negotiations within three months of entry into force of the present Agreement, and aim to reach agreement within two years from the beginning of the negotiations.
 - d. During the period of these negotiations, actions incompatible with these commitments shall be avoided.

Article 11

1. The Holy See and the State of Israel declare their respective commitment to the promotion of the peaceful resolution of conflicts among States and nations, excluding violence and terror from international life.
2. The Holy See, while maintaining in every case the right to exercise its moral and spiritual teaching-office, deems it opportune to recall that, owing to its own character, it is solemnly committed to remaining a stranger to all merely temporal conflicts, which principle applies specifically to disputed territories and unsettled borders.

Article 12

The Holy See and the State of Israel will continue to negotiate in good faith in pursuance of the Agenda agreed upon in Jerusalem, on 15 July 1992, and confirmed at the Vatican, on 29 July 1992; likewise on issues arising from Articles of the present Agreement, as well as on other issues bilaterally agreed upon as objects of negotiation.

Article 13

1. In this Agreement the Parties use these terms in the following sense:
 - a. The Catholic Church and the Church - including, inter alia, its Communities and institutions,
 - b. Communities of the Catholic Church - meaning the Catholic religious entities considered by the Holy See as Churches sui juris and by the State of Israel as Recognized Religious Communities;

- c. The State of Israel and the State - including, inter alia, its authorities established by law.
2. Notwithstanding the validity of this Agreement as between the Parties, and without detracting from the generality of any applicable rule of law with reference to treaties, the Parties agree that this Agreement does not prejudice rights and obligations arising from existing treaties between either Party and a State or States, which are known and in fact available to both Parties at the time of the signature of this Agreement.

Article 14

1. Upon signature of the present Fundamental Agreement and in preparation for the establishment of full diplomatic relations, the Holy See and the State of Israel exchange Special Representatives, whose rank and privileges are specified in an Additional Protocol.
2. Following the entry into force and immediately upon the beginning of the implementation of the present Fundamental Agreement, the Holy See and the State of Israel will establish full diplomatic relations at the level of Apostolic Nunciature, on the part of the Holy See, and Embassy, on the part of the State of Israel.

Article 15

This Agreement shall enter into force on the date of the latter notification of ratification by a Party.

Done in two original copies in the English and Hebrew languages, both texts being equally authentic. In case of divergency, the English text shall prevail.

Signed in Jerusalem, this thirtieth day of the month of December, in the year 1993, which corresponds to the sixteenth day of the month of Tevet, in the year 5754.

FOR THE GOVERNMENT OF THE STATE OF ISRAEL

FOR THE HOLY SEE

Additional Protocol

1. In relation to Art. 14 (1) of the Fundamental Agreement, signed by the Holy See and the State of Israel, the 'Special Representatives' shall have, respectively, the personal rank of Apostolic Nuncio and Ambassador.
2. These Special Representatives shall enjoy all the rights, privileges and immunities granted to Heads of Diplomatic Missions under international law and common usage, on the basis of reciprocity.
3. The Special Representative of the State of Israel to the Holy See, while residing in Italy, shall enjoy all the rights, privileges and immunities defined by Art. 12 of the Treaty of 1929 between the Holy See and Italy, regarding Envoys of Foreign Governments to the Holy See residing in Italy. The rights, privileges and immunities extended to the personnel of a Diplomatic Mission shall likewise be granted to the personnel of the Israeli Special Representative's Mission. According to an established custom, neither the Special Representative, nor the official members of his Mission, can at the same time be members of Israel's Diplomatic Mission to Italy.
4. The Special Representative of the Holy See to the State of Israel may at the same time exercise other representative functions of the Holy See and be accredited to other States. He and the personnel of his Mission shall enjoy all the rights, privileges and immunities granted by Israel to Diplomatic Agents and Missions.

5. The names, rank and functions of the Special Representatives will appear, in an appropriate way, in the official lists of Foreign Missions accredited to each Party.

Signed in Jerusalem, this thirtieth day of the month of December, in the year 1993, which corresponds to the sixteenth day of the month of Tevet, in the year 5754.

*FOR THE GOVERNMENT OF THE STATE OF ISRAEL
FOR THE HOLY SEE*

- B. Legal Personality Agreement, Israel-Holy See, 10 Nov. 1997, *available at* <http://www.mfa.gov.il/MFA/MFAArchive/19961997/Legal%20Personality%20Agreement-%20State%20of%20Israel-Holy>.

**Agreement between the State of Israel and the Holy See
Pursuant to Article 3 (3) of the Fundamental Agreement between the State of Israel and the
Holy See (also referred to as the "Legal Personality Agreement")**

Article 1

This Agreement is made on the basis of the provisions of the "Fundamental Agreement between the State of Israel and the Holy See", which was signed on 30 December 1993, and then entered into force on 10 March 1994 (hereinafter: the "Fundamental Agreement").

Article 2

Recalling that the Holy See is the Sovereign Authority of the Catholic Church, the State of Israel agrees to assure full effect in Israeli law to the legal personality of the Catholic Church itself.

Article 3

1. The State of Israel agrees to assure full effect in Israeli law, in accordance with the provisions of this Agreement, to the legal personality of the following:
 - a. these Eastern Catholic Patriarchates: the Greek Melkite Catholic, the Syrian Catholic, the Maronite, the Chaldean, the Armenian Catholic (hereinafter: the "Eastern Catholic Patriarchates");
 - b. the Latin Patriarchate of Jerusalem, id est the Latin Patriarchal Diocese of Jerusalem;
 - c. the present Dioceses of the Eastern Catholic Patriarchates;
 - d. new Dioceses, wholly in Israel, Eastern Catholic or Latin, as may exist from time to time;
 - e. the "Assembly of the Catholic Ordinaries of the Holy Land".
 - f. The Holy See states, for the avoidance of doubt, that the listing in par. 1 does not prejudice in any way the established order of precedence of the Heads of the various entities, according to their personal rank and as it is fixed by traditional usage and accepted by them.
 - g. For the avoidance of doubt, it is stated that the question of assuring full effect in Israeli law to the legal personality of any new cross-border Diocese is left open.
 - h. For the purposes of this Agreement, a Parish is in integral part of the respective Diocese, and, without affecting its status under the canon law, will not acquire a separate legal personality under Israeli law. A Diocese may, subject to the canon law, authorise its Parishes to act on its behalf, in such matters and under such terms, as it may determine.
 - i. In this Agreement, "Diocese" includes its synonyms or equivalents.

Article 4

The State of Israel agrees to assure full effect in Israeli law, in accordance with the provisions of this Agreement, to the legal personality of the Custody of the Holy Land.

Article 5

The State of Israel agrees to assure full effect in Israeli law, in accordance with the provisions of this Agreement, to the legal personality of the following, as they exist from time to time in Israel:

- a. the Pontifical Institutes of Consecrated Life of the kinds that exist in the Catholic Church, and such of their Provinces or Houses as the Institute concerned may cause to be certified;
- b. other official entities of the Catholic Church.

Article 6

1. For the purposes of this Agreement the legal persons referred to in Articles 3-5 (hereinafter, in this Article: "legal person"), being established under the canon law, are deemed to have been created according to the legislation of the Holy See, being Sovereign in international law.

2.

- a. the law which governs any legal transaction or other legal acts in Israel between any legal person and any party shall be the law of the State of Israel, subject to the provisions of sub-paragraph (b).
- b. Any matter concerning the identity of the head, of the presiding officer or of any other official or functionary of a legal person, or their authority or their powers to act on behalf of the legal person, is governed by the canon law.
- c. Without derogation from the generality of sub-paragraph (b), certain kinds of transactions by a legal person concerning immovable property or certain other kinds of property, depend on a prior written permission of the Holy See in accordance with Its written Decisions as issued from time to time. Public access to the aforesaid Decisions will be in accordance with the Implementation Provisions.

3.

- a. Any dispute concerning an internal ecclesiastical matter between a member, official or functionary of a legal person and any legal person, whether the member, official or functionary belongs to it or not, or between legal persons, shall be determined in accordance with the canon law, in a judicial or administrative ecclesiastical forum.
- b. For the avoidance of doubt it is stated that the provisions of 2(a) shall not apply to disputes referred to in the above sub-paragraph (a).

4. For the avoidance of doubt, it is stated:

- a. a legal person, whose legal personality is given full effect in Israel, is deemed to have consented to sue and be sued before a judicial or administrative forum in Israel, if that is the proper forum under Israeli law.

b. Sub-paragraph (a) does not derogate from any provision in Articles 6-9.

Article 7

The application of this Agreement to any legal person is without prejudice to any of its rights or obligations previously created.

Article 8

1. For the avoidance of doubt, nothing in this Agreement shall be construed as supporting an argument that any of the legal persons to which this Agreement applies had not been a legal person prior to this Agreement.

2. If a party makes a claim that such a legal person had not been a legal person in Israeli law prior to this Agreement, that party shall bear the burden of proof.

Article 9

Should a question with regard to the canon law arise in any matter before a Court or forum other than in a forum of the Catholic Church, it shall be regarded as a question of fact.

Article 10

The terms "ecclesiastical" and "canon law" refer to the Catholic Church and Its law.

Article 11

1. Without derogating from any provision, declaration or statement in the Fundamental Agreement, the ecclesiastical legal persons in existence at the time of the entry of this Agreement into force are deemed as being legal persons in accordance with the provisions of this Agreement, if listed in the ANNEXES to this Agreement, which are specified in par. 4.
2. The ANNEXES form, for all intents and purposes, an integral part of this Agreement.
3. The ANNEXES will include the official name, respective date or year of establishment in the Catholic Church, a local address and, if the head office is abroad, also its address.
4.
 - a. ANNEX I lists the legal persons to which Article 3(1)(a, b, c, e) and Article 4 apply, as the case may be;
 - b. ANNEX II lists the legal persons to which Article 5(a) applies;
 - c. ANNEX III lists the legal persons to which Article 5(b) applies.

Article 12

The other matters on which the Parties have agreed are included in the Schedule to this Agreement, named "Implementation Provisions", which forms, for all intents and purposes, an integral part of this Agreement, and references to the Agreement include the Schedule.

Article 13

This Agreement shall enter into force on the date of the latter notification of ratification by a Party.

Done in two original copies in the Hebrew and English languages, both texts being equally authentic. In case of divergence, the English text shall prevail, except where explicitly provided otherwise in the Schedule.

Signed in Jerusalem this 10th day of the month of November in the year 1997, which corresponds to the 10th day of the month of Heshvan in the year 5758.

*For the Government
of the State of Israel
For the Holy See*