



Israel Religious Action Center



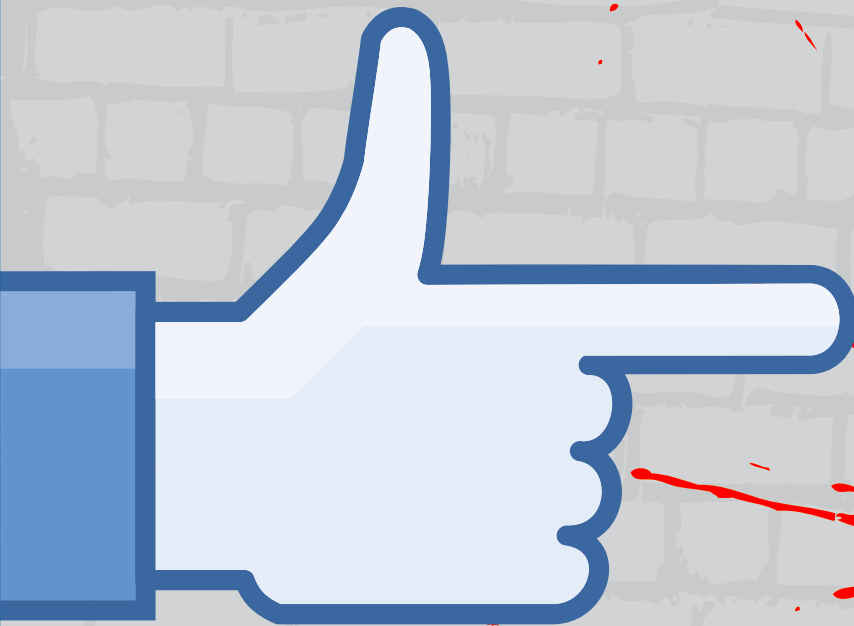
Israel Movement for Reform
and Progressive Judaism

The Writing

on the WALL

Online Racist Incitement against Arabs in Israel

2015



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Online Racist Incitement against Arabs in Israel **2015**

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Preface / Dr. Yuval Dror*

Freedom of expression is one of the inherent properties of the internet, part of its very DNA. The internet acquired this character due to a combination of three historical circumstances:

- A. The internet was created in the United States, where the First Amendment to the Constitution grants an almost sacred status to freedom of expression.
- B. The internet developed as an academic domain where freedom of expression is an essential condition for the progress of ideas and science. Accordingly, it relies on a culture that encourages diverse opinions.
- C. In both technical and normative terms, the internet has supported anonymous expression, freeing people from the fear of reprisals for making critical or subversive statements.

During the first decade of the 21st century, however, we witnessed a series of developments that on the one hand challenged people's ability to express themselves freely, and on the other led in certain instances to increasingly extremist forms of expression.

Among other changes, the internet moved beyond the confines of the United States and became a global phenomenon. In many countries, including superpowers such as China, freedom of expression cannot be taken for granted. Moreover, the internet expanded into a broader commercial and civil realm in which libel and copyright laws are frequently exercised, and in which statements of incitement are outlawed. Finally, the emergence of Facebook as the most popular online platform around the world created a

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normative infrastructure for discourse in which statements are attributed to identifiable and discrete users.

In theory, these changes could be expected to influence the quality of discourse that emerges online, rendering it more moderate, if not more cautious, insular and reserved. However, the internet does not operate in isolation from the external social and cultural world; the two realms are closely intertwined. Accordingly, in some countries, including Israel, circumstances actually led to an increasingly harsh and extreme form of discourse.

Over the past decade, Israeli society has undergone a process of radicalization in public discourse. Elected representatives, such as Miri Regev, use the substantial immunity they enjoy as Members of Knesset to express their opinion in an extreme manner that verges on incitement. Elected representatives express these opinions on social media platforms, particularly Facebook, and enjoy considerable encouragement and enthusiastic endorsements, thereby motivating others to adopt the same style of expression.

Certain sections of Israeli society interpret the presence of such statements to mean that they are permitted and legitimate; accordingly, they repeat these statements and present them in even more extreme terms. During periods of security crisis, such as when Israel was engaged in an armed conflict with Hamas, these statements developed into full-fledged incitement.

A fundamental characteristic of any human group is that it closes ranks and unites against an external enemy. The Israeli-Jewish public identifies Israeli Arabs as supporting Hamas, and accordingly as a threat to their security. Left-wing Israelis who criticize the actions of the government or the IDF during periods of fighting are perceived as traitors and a threat to social order, and it is argued that forceful action must be taken against them.

The combination of the legitimization of extremist statement on an unsupervised global-commercial network, one which permits and indeed encourages such statements in order to foster debate, 'likes', and attention, creates a sociocultural dynamic of extremism that is often colored by racism.

As if this were not enough, online platforms encourage not only the coordination of attitudes ("I think like this, and I see that you do too") but also the coordination of action ("let's meet on Thursday at 8 p.m. in the square") During Operation Protective Edge in the summer of 2014, the combination of statements urging extremist action, published on a platform that permits social organization, led to a large number of violent attacks against left-wing activists, journalists, and Arabs, who came to be seen as legitimate targets.

Ostensibly, it might seem that legal tools can be used to combat these phenomena, since most of the statements and actions we are discussing are contrary to the law. However, the scale of the problem, the frequency of the statements and actions involved, and the social legitimacy they enjoy mean that conventional legal tools are in practice irrelevant.

This dynamic, which relies on the political situation, social norms, and technological infrastructure, is counterintuitive to the position which was common in the 1990s, that the cover of anonymity encourages extremist public discourse. It also shows that the attempt to lay the blame on any one factor is superficial and futile.

Such phenomena are not created by a single cause, and accordingly there is no single magic solution, and certainly not a technical one. What is needed is diverse action including legislative amendments, enhanced enforcement, education, and creation of awareness of the scope of the problem. This report is an important and positive starting point in this process.

**“You don’t hate me
You hate the image you created about me.
This image is you, not me”**

Adonis

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Introduction

In recent years, and particularly during the past year, Israel has experienced a growing wave of incitement and racism. As in most areas of modern life, this phenomenon is evident on the internet. Indeed, the web is a key player in this process. The unique features of the internet, such as anonymity, lack of supervision, and immediate and easy access not only permit incitement, but significantly exacerbate the scope and severity of the phenomenon. In a country such as Israel that has chosen to criminalize incitement to racism and violence, the internet presents new and unique challenges and raises important questions regarding ways to curb online incitement in today’s society. We should emphasize that while no-one disputes the importance of the principle of freedom of expression, most democracies impose restrictions on this freedom with the goal of preventing manifestations of racial hatred. They do so in order to protect values that are no less important than freedom of expression – the values of equality and human dignity.

We live in the age of the internet. Over the past decades, the internet has gained a presence in almost every home and institution in the Western world. Thanks to the cell phone revolution, the internet is now spreading to almost every corner of the globe. The internet accompanies, and some would argue creates, many of the most important human, cultural, and political developments of our time. The Web is a powerful tool; and like any technology, it is intrinsically neutral and can be used for positive and

* We would like to thank Prof. Michael Birnhack for his valuable comments. Naturally, this report reflects solely the position of the Israel Religious Action Center.

negative purposes. The internet has created new possibilities for transferring and sharing information among millions of people. It has changed the way we communicate with others, search for information, make purchases, receive banking services, and manage contacts with the authorities. It has facilitated economic and social cooperation on a staggering scale.

However, the same attributes that have enabled these changes have also turned the internet into an attractive tool for those who seek to spread incitement and to undermine liberal and democratic values. Instead of handing out leaflets and posters, those who seek to incite now have access to a wide range of means: email messages, social networks, websites, blogs, forums, chats, and so forth. All of these allow people to reach a mass audience with a single click. Online incitement is by no means an exclusively Israeli phenomenon; it forms part of a broader global pattern of antisocial behavior that has found a home on the internet.¹ The internet allows every individual to enjoy freedom of expression. In the absence of social supervision, and under the cloak of anonymity, it can encourage violent, aggressive, and stereotypical discourse that incites racism and violence. Minority groups around the world have reported that they encounter manifestations of hatred on the web: African-Americans, Latinos, women, Jews, the LGBTIQ community, and Muslims all report an increase in hostile messages directed at and about them.²

This report aims to examine the phenomenon of online incitement as it is directed at the Arab public in Israel. The Israel Religious Action Center (IRAC) has been working for over a decade in both the legal and public arenas to combat racist incitement against the Arab population.³ From July

¹ Richard Delgado and Jean Stefanci, *Hate Speech in Cyberspace*, 49 WAKE FOREST L. REV. 319, 320 (2014). We should note that while this report discusses the phenomenon of incitement, these antisocial behaviors also include such phenomena as bullying and pornography.

² *Ibid.*, 319.

³ See <http://www.irac.org/PublicPolicy.aspx> on our website for a review of IRAC's work to combat racism.

through the end of October 2014, IRAC monitored over 50 Facebook pages, websites, and Instagram, Twitter, and YouTube accounts that displayed racist comments or incitement. The instances of racism we examined were all public, on Facebook pages and websites devoted specifically to anti-Arab hatred and incitement, and not in private online conversations. Some of the statements were made by the owners of the relevant internet pages (public figures and organizations), while others were comments and talkbacks posted on Facebook pages or websites. In total, we reviewed 563 statements, which we divided into eight thematic categories. A cursory review of the analysis of these findings raises an extremely alarming picture. Almost one-third of the instances of racism include calls for violence against Arabs, including concrete proposals to adopt violence, the slogan “death to Arabs,” and encouragement of violence against Arabs.

In the internet era, social networks and search engines, which are private companies, have become gatekeepers who decide what information will be passed on to the public.⁴ For example, Facebook wields unimaginable power to determine who can speak and disseminate information – a power that may well exceed that of the legal system.⁵ In Israel in 2015, much of the information that is transmitted preaches violence and incitement.

Israeli law is clear and unequivocal on this matter, prohibiting incitement to racism and violence, including via the internet. The legislator has identified the phenomenon of racism, and particularly incitement to racism, as an illegitimate social phenomenon that must be uprooted, and has granted the state appropriate tools to this end. A number of attempts were indeed made to take legal action against the operators of racist Facebook pages following the events of the summer of 2014, but to date law enforcement agencies do not appear to have formulated a coherent, uniform, and long-

⁴ Marjorie Heins, “The Brave New World of Social Media Censorship,” 127 *HARVARD L. REV. FORUM* 325, 325 (2014).

⁵ *Ibid.*

term policy for uprooting online incitement. In any case, it is important to bear in mind that given the dynamic character of the internet, any solution or policy which has evolved to address these problems must also be dynamic and flexible, enabling the constant examination of online and technological changes.⁶

The first part of this report will present the findings of IRAC's study, undertaken between July and the end of October 2014. The description of the findings includes examples of each of the categories of inciting statements, and the percentage of statements belonging to each category. We then discuss the unique character of the internet which, as noted, facilitates and amplifies the presence of incitement. The second part of the report, Internet Incitement – The Legal Perspective, reviews the legal significance of the racist manifestations presented in the findings. This part discusses issues relating to freedom of expression on the internet and details the offenses of incitement to racism and incitement to violence as defined under Israeli law. We also discuss specific legal issues relating to the internet, such as the question of jurisdiction and problems of enforcement resulting from the anonymous potential of the internet and the character of internet suppliers and companies. This section also provides a review of the ways in which international law has addressed issues relating to online incitement. The final part of the report summarizes our conclusions and presents recommendations for actions by state authorities, internet suppliers, civil society organizations, and individual internet users.

We hope that by illuminating the phenomenon of online incitement we will help to raise public awareness of this problem. Such awareness should be translated into firmer enforcement, which can in the long term help reduce this phenomenon. This will help moderate racist incitement in society as a whole, not only in the realm of the internet.

⁶ Brian O'Neill, *Report of the Internet Content Governance Advisory Group*, 2 (2014) <http://www.dcenr.gov.ie/NR/rdonlyres/0BCE1511-508E-4E97-B1A9-23A6BE9124AA/0/InternetContentGovernanceAdvisoryGroup.pdf>

The Phenomenon of Online Incitement

A dramatic increase was seen in Israel in 2014 in manifestations of racism in general, and in online racism in particular. These manifestations intensified dramatically in June 2014, following the kidnapping and murder of the three youths Gilad Michael Shaer, Naftali Yaacov Fraenkel, and Eyal Yifrah, the kidnapping and murder of the youth Muhammad Abu Khdeir, and Israel's Operation Protective Edge in the Gaza Strip.⁷ For example, a sample examination undertaken by the Coalition against Racism in Israel on the weekend following the murder of the youth Muhammad Abu Khdeir found that 50 percent of the content of online discussions concerning the escalating security situation consisted of calls for action against Arabs, including revoking their citizenship and boycotting their businesses.⁸

Between July 2014 and the end of October 2014, IRAC monitored Facebook pages and websites that presented racist or inciting content. These websites,

⁷ Chaim Rivlin, "Israel 2014: Online Racism and Harassment," *Channel Two News*, 30 July 2014, <http://www.mako.co.il/news-israel/education/Article-e81b219e8c88741004.htm> (in Hebrew).

For a description of the outburst of racism following the kidnapping of the three youths, see: "Online Incitement: The Jewish People Demand Revenge," *Channel Two News*, 2 July 2014, <http://www.mako.co.il/news-military/security/Article-61e963adb67f641004.htm> (in Hebrew).

For a description of incitement during Operation Protective Edge, see: Shai Vogelmann, Hilo Glaser, Naomi Dross, and Neta Achituv, "Facebook Incitement: Fear of Walking the Streets, Persecution at Work. Have We Reached a Fault Line in Jewish-Arab Relations in Israel?" *Ha'aretz*, 31 July 2014 <http://www.haaretz.co.il/magazine/.premium-1.2393385> (in Hebrew); *Report of the Coalition against Racism in Israel following Operation Protective Edge: 44% of the discourse on the internet is racist and inciting*, Coalition against Racism in Israel, 19 July 2014, <http://www.fightracism.org/en/Article.asp?aid=496>

During Operation Protective Edge, an increase in incitement was seen not only against the Arab minority but also against left-wing groups that expressed opposition to the operation. The incitement continued after the end of the military operation. See: Arik Bender, "Online Incitement Continues: Leftists are Part of the 'Jewish Battalion of the Hamas,'" *Ma'ariv Online*, 5 August 2014, <http://www.maariv.co.il/news/new.aspx?pn6Vq=E&0r9VQ=FMJGG>; Oded Yaron, "The Facebook Groups Targeting 'Jewish Self-Haters,'" *Ha'aretz*, 26 July 2014, <http://www.haaretz.co.il/captain/net/.premium-1.2388411>.

⁸ "Index of Online Incitement: 50% of Talkbacks Demand Sanctions," *Nexter*, 8 July 2014, <http://www.mako.co.il/nexter-internet/social-networks-facebook/Article-e428c307bb41741006.htm> (in Hebrew).

Facebook pages, Instagram and YouTube accounts sought to “share” racist ideology and to disseminate propaganda with the goal of inciting violence, spreading fear of the other, providing links to similar racist websites, and recruiting new members to their ranks. In addition to generic incitement to racism and violence, some of these pages also disseminated specific demands for organized action entailing racist attacks. Members on the page exchanged telephone numbers and determined potential meeting places with the intention of attacking Arab individuals.

IRAC selected the Facebook pages on the basis of our longstanding activities in the field and our acquaintance with the key players in the field of incitement to racism and violence. In total, we examined some 560 statements on over 50 Facebook pages, websites, and Instagram, Twitter, and YouTube accounts.⁹ Some of the statements were made by public

⁹ The following is the list of Facebook pages, websites, and Instagram, Twitter, and YouTube accounts we examined (all the pages are in Hebrew): Kedar Yekutieli (YouTube), the Facebook page “I have no other land,” the Facebook page of Itamar Ben Gvir, the Facebook page “We protest about the closing of the Facebook page of Michael Ben Ari,” the Facebook page “The Al-Yahud Organization in Haifa and the Krayot,” the Facebook page “The Al-Yahud Organization – Center – official,” the Facebook page “Traitors, We’re Sick of You,” the Facebook page “Jewish Girls Are Not Free for All,” Bentzi Gopstein (YouTube), Bentzi Gopstein – Lehava Organization (Instagram), the Facebook page “Baruch Marzel – The Official Page,” the Facebook page “I also support outlawing Islam,” the Facebook page “I also do not condemn the Price Tag actions,” the Facebook page “I also do not shop at Ramzi Lawi,” the Facebook page “The Shadow’s Lions – the official page,” the Facebook page “Netanel’s blood is the blood of all of us,” the Facebook page “Return Jewish nationality to the identity cards,” the Facebook page “The Real Right – the official page,” the Facebook page “The right demonstrates – support IDF soldiers,” the Facebook page “The Maccabees – fighting for our land, our people, and our Torah,” the Facebook page “The Hebrew City,” the Facebook page “The blue and white future – relocation,” the Jewish Voice website, The Jewish Voice (Twitter), The Jewish Voice (YouTube), the Facebook page “The Jewish Voice,” the Facebook page of Rabbi Dov Lior, the Facebook page “The Jewish Idea – Hebrew labor,” the Facebook page of Chaim Ben Pesach, the Facebook page “Boycott the Israeli Arabs,” the Facebook page “Consumer boycott of Israeli Arabs,” the Facebook page “Yad L’Achim,” Yad L’Achim (YouTube), the Facebook page “We all support expelling the extreme left,” the Facebook page “We are all Zionists,” the Facebook page “The Al-Yahud Gang – Center,” the Facebook page “They won’t extinguish Lehava,” the Facebook page “We don’t buy from enemies,” the Facebook page “We don’t buy from Jew haters,” Lehava (new website), the Facebook page “Lehava,” the Facebook page “Lehava Netanya,” the Facebook page “Fighters, not sitting ducks,” May Golan (YouTube), the Facebook page “Boycott the enemy within,” the Facebook page “Around the Central

figures; it must be borne in mind that these have greater influence and naturally reach a particularly large audience. Due to the dynamic character of the internet, some of the Facebook pages no longer exist. Others have changed their names and continue in different formats.

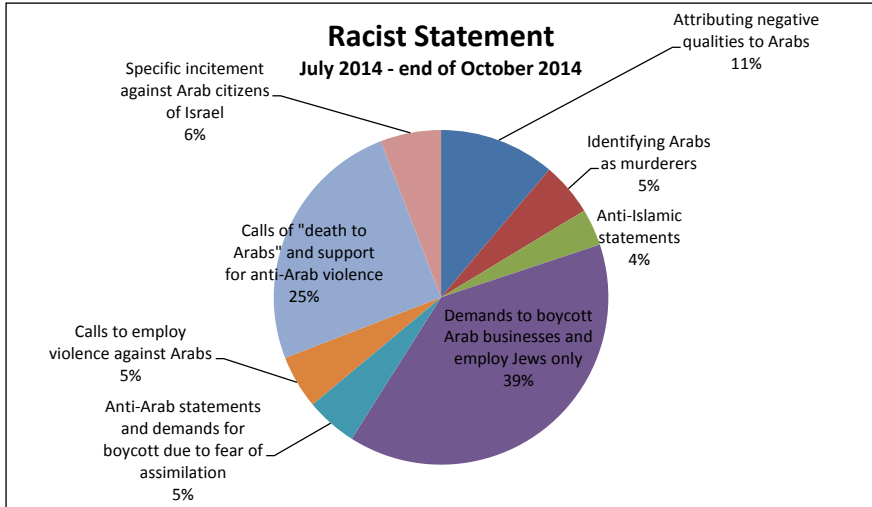
As a general rule, a higher level of online incitement can be seen during periods of terror attacks and security tension. Our examination of racist and inciting Facebook pages and websites was conducted during and after Operation Protective Edge. This undoubtedly influenced the levels of incitement we encountered. We should note that IRAC is continuing to monitor online racism, and our work shows that the internet continues to serve as fertile ground for racism, violence, and incitement.

Our findings show that a large proportion of the inciting statements (almost 40 percent) include demands to boycott businesses that employ Arabs, or to dismiss Arab workers and insist on “Jewish labor” (or “Hebrew labor,” meaning the employment of Jews only). A further significant finding is that almost one-third (30 percent) of the statements include concrete calls for violence against Arabs, the slogan “death to Arabs,” and expressions of support for acts of violence against Arabs.

For each category, we provide an explanation of the nature of the category, as well as selected examples. We should note that some of the examples documented by IRAC are no longer accessible online.

Bus Station – the south Tel Aviv campaign page,” the Facebook page “Death penalty for terrorists,” the Facebook page “Ofar Golan Jewish Strength,” the Facebook page “Jewish Strength with Michael Ben Yair,” the Facebook page “The Seamline Neighborhoods list, headed by Aryeh King,” the Facebook page “Left-wingers who irritate me,” the Facebook page “Jerusalem residents demand live fire against rioters,” the Facebook page “Hebrew-Zionist employment.”

Findings



The following sections present the main findings and representative examples for each of the categories. The category titles also state the percentage of the total statements reviewed that were attributed to the relevant category. We warn readers that the statements are harsh and distasteful, and are translated here as they were written [the translation uses equivalently unpleasant English epithets and spelling mistakes].

Attributing Negative Qualities to Arabs (11.1% of the statements)

This category includes statements that accuse Arabs in general of having negative and destructive characteristics, as well as curses against Arabs and the Arab population. The following comments are typical of this category:

"The Arabs are corrupting us, the United States, and Europe;"¹⁰ "A nation of sons of bitches and scum. Damn Arabs, may they burn in hell, amen;"¹¹

¹⁰ Facebook page "Baruch Marzel – the official page," 18 October 2014.

¹¹ Facebook page "Baruch Marzel – the official page," 9 September 2014
<https://www.facebook.com/video.php?v=147778389139627&set=vb.145737176118029>

“A nation worse than dogs;”¹² “A nation of scoundrels.. a nation of people who lust after their neighbors... a nation that should really be our slaves... actually they aren’t a people at all... they are wild animals from the far-off desert;”¹³ “a nation of sick people, disgusting Arabs;”¹⁴ “filthy Arabs;”¹⁵ “Arabs are the cancer of the world;”¹⁶ “we’ll keep on arguing against all the people who claim that not all the Arabs are like that and that there are also some good ones;”¹⁷ “Arabs are constantly rioting;”¹⁸ “Poisoning in a hotel in Tiberias – does anyone have any doubt that it’s one of the Arab waiters who work there???”¹⁹ “a nation of thieves;”²⁰ Baruch Marzel’s Facebook page showed a video clip of car thieves, accompanied by the question: “What nation do the thieves come from?;”²¹ the Facebook page “Return Jewish nationality to the identity cards” posted a video clip showing men beating a woman, with the title “What Arabs do;”²² Rabbi Yitzhak Shapira claims that Jews are merciful by nature, while non-Jews are cruel by nature;²³ “An Arab is an Arab, wherever he comes from. The same

0&type=2&theater

- ¹² Facebook page “Baruch Marzel – the official page,” 9 September 2014
<https://www.facebook.com/video.php?v=1477778389139627&set=vb.1457371761180290&type=2&theater>
- ¹³ Facebook page “Baruch Marzel – the official page,” 9 September 2014
<https://www.facebook.com/video.php?v=1477778389139627&set=vb.1457371761180290&type=2&theater>
- ¹⁴ Facebook page “Baruch Marzel – the official page,” 9 September 2014
<https://www.facebook.com/video.php?v=1477778389139627&set=vb.1457371761180290&type=2&theater>
- ¹⁵ Facebook page “Baruch Marzel – the official page,” 23 October 2014.
- ¹⁶ Facebook page “Baruch Marzel – the official page,” 9 September 2014
<https://www.facebook.com/video.php?v=1477778389139627&set=vb.1457371761180290&type=2&theater>
- ¹⁷ Facebook page “The Al-Yahud Gang – Center,” 1 August 2014.
- ¹⁸ Facebook page “Netanel’s blood is the blood of all of us,” 2 October 2014.
- ¹⁹ Facebook page “Boycott the enemy within,” 26 September 2014.
- ²⁰ The Jewish Voice, 21 August 2014.
- ²¹ Facebook page “Baruch Marzel – the official page,” 9 September 2014.
- ²² Facebook page “Returning Jewish nationality to the identity cards,” 21 September 2014.
- ²³ Facebook page “The Jewish Voice,” 3 August 2014.

thing in different guise. They all hate Israel;”²⁴ “They deserve it, didn’t they learn from the Holocaust that you can’t trust your enemy? Anyone who lets Arabs into their home shouldn’t complain. Don’t forget that even a good Arab is an enemy;”²⁵ “I’ve said it before – an Arab is an enemy.”²⁶

Identifying Arabs as Murderers (5.1% of the statements)

This category includes statements that claim that all Arabs are murderers and terrorists. Typical statements include:

“The housing minister is going to let another 5,000 terrorists in to work in construction – another 5,000 waiting for the opportunity to run down, to stab, to attack;”²⁷ “...every Arab child wants to be a terrorist;”²⁸ “God will avenge their blood, every one. They are all terrorists! There isn’t a single good Arab;”²⁹ “Thank you to another Jerusalem Arab for reminding us that you are terrorists. With God’s help we will have leaders who know how to take revenge from the bottom of their hearts;”³⁰ “The Arabs want to kill us;”³¹ “Every Arab is a suspicious object!”³² “For some reason people behave as if Hamas is only in Gaza; wherever there are Arabs there are terrorists;”³³ “Maybe now he’s behaving like a good Arab, but every last Arab is a terrorist, without exception;”³⁴ “What does ‘don’t

²⁴ Facebook page “We are all Zionists,” 11 October 2014.

²⁵ Facebook page “The Jewish Voice,” 20 August 2014.

²⁶ Facebook page “The Jewish Voice,” 20 August 2014.

²⁷ Facebook page “Jewish Strength with Michael Ben Ari,” 18 September 2014.

²⁸ Facebook page “The Al-Yahud Organization – Center – official,” 12 October 2014.

²⁹ Facebook page “Netanel’s blood is the blood of all of us,” 26 October 2014.

³⁰ <https://www.facebook.com/kolano.netanel/photos/a.748469705200327.1073741828.748058505241447/760445150669449/?type=1&theater>

Facebook page “Jewish girls aren’t free for all,” 4 August 2014.

³¹ Facebook page “Boycott the enemy within,” 21 September 2014.

³² Facebook page “I don’t have another country,” 5 August 2014.

³³ The Jewish Voice, 3 August 2014.

³⁴ The Jewish Voice, 4 August 2014.

generalize' mean?! They inherit murder and theft with the milk of their whore mother, who is always happy that her son is a shahid (martyr). I hope the world will finally understand who they're dealing with."³⁵ Baruch Marzel's Facebook page showed talkbacks claiming that Arab physicians are terrorists and murderers.³⁶

Anti-Islamic Statements ***(3.5% of the statements)***

This category includes curses and attacks against Muslims and Islam. Typical statements in this category include:

"Mohammed is dead;"³⁷ "There's no doubt that all the problems in the world start and end with the Muslims, may their name and memory be obliterated;"³⁸ "They should stop the subway [i.e. light rail system – trans.] from traveling to East Jerusalem. Arabs = animals;"³⁹ "Islam is a terror organization that threatens the world;"⁴⁰ "Human animals, beasts, Islam is garbage!"⁴¹ "We'll never be as cruel as the Muslims;"⁴² "All Islam has given the world is killing, murder, blood, and cruelty. It's time to outlaw Islam, at least in Israel;"⁴³ "Only Muslims are capable of killing a whole family and a three-month-old girl with a knife! It's time to outlaw this

³⁵ Facebook page "Baruch Marzel – the official page," 10 September 2014.

³⁶ Facebook page "Baruch Marzel – the official page," 18 October 2014.

³⁷ Clip published on the Facebook page "Boycott the enemies," 20 August 2014.

³⁸ Facebook page "Baruch Marzel – the official page," 10 September 2014.

<https://www.facebook.com/video.php?v=1477778389139627&set=vb.1457371761180290&type=2&theater>

³⁹ Facebook page "Jerusalem residents demand live fire against rioters," 12 October 2014. Shuafat is a Palestinian neighborhood in north Jerusalem.

⁴⁰ Facebook page, "Death penalty for terrorists," 12 August 2014.

⁴¹ Facebook page "Return Jewish nationality to the identity cards," 29 September 2014.

⁴² Facebook page, "We don't buy from Jew-haters," 5 October 2014.

⁴³ Self-description of the Facebook page "I also support outlawing Islam."

<https://www.facebook.com/pages/%D7%92%D7%9D-%D7%90%D7%A0%D7%99-%D7%91%D7%A2%D7%93-%D7%9C%D7%94%D7%95%D7%A6%D7%99%D7%90-%D7%90%D7%AA-%D7%94%D7%90%D7%99%D7%A1%D7%9C%D7%90%D7%9D->

religion!"⁴⁴ "Islam is solely responsible, directly or indirectly, for murdering, raping, and abusing millions of humans. It's time to outlaw this scourge! We mustn't allow a religion that commands people to kill anyone who opposes it, and demands that Jews live in constant humiliation, to be legal in the State of Israel!"⁴⁵ "It's in Muslims' DNA and it's the legacy of Mohammed... they live on terror and they feed on blood! Racist? I always declare that I'm a proud racist... that's better than being a hypocritical, anti-Semitic, Jew-hating 'enlightened' person!"⁴⁶ "Only Islam can make a mother send her child to his death!"⁴⁷ "The Koran is the same Koran, Islam is the same Islam, Muslim terror is the same terror, pedophilia and zoophilia are legal with these lunatics, a religion of insanity, it should be outlawed;"⁴⁸ "They've been here for years. Islam is ISIS."⁴⁹



"Because there's nothing in the world like Mom's love."

<https://www.facebook.com/MichaelsonSonLion/photos/a.704104372997170.1073741830.703857626355178/729230850484522/?type=1&theater>

⁴⁴ Facebook page "I also support outlawing Islam," 27 September 2014.

⁴⁵ Facebook page "I also support outlawing Islam," 28 September 2014.

⁴⁶ Facebook page "Jewish Strength with Michael Ben Ari," 6 September 2014.
<https://www.facebook.com/MichaelsonSonLion/photos/a.704104372997170.1073741830.703857626355178/729230850484522/?type=1&theater>

⁴⁷ Facebook page "I also support outlawing Islam," 3 October 2014.

⁴⁸ Facebook page "Jewish Strength with Michael Ben Ari," 22 October 2014.

⁴⁹ Facebook page "Al-Yahud Official," 22 October 2014.



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Demands to Boycott Arab Businesses and Employ Jews Only ***(39.07% of statements)***

This category includes calls to refrain from employing non-Jewish workers and using the services of businesses that employ non-Jewish workers, as well as statements supporting Jewish-only labor and publicizing businesses that employ Jews only. Typical statements in this category include:

A demand to boycott the taxi application GetTaxi because it works with a non-Jewish car wash company;⁵² a demand to boycott an Arab-owned bakery in Haifa;⁵³ **“Just as a Jew must keep the Sabbath and fast on Yom Kippur, he must not buy there;”**⁵⁴ **“Don’t help Arabs make a living;”**⁵⁵ **“El-Dag factory in Petach Tikva has sacked all its Arab employees and is looking for Jewish workers to replace them. Support them and forward this message!”**⁵⁶ **“From two weeks ago, we don’t buy anything from**

⁵⁰ Facebook page “Jewish Strength with Michael Ben-Ari,” 19 August 2014.

⁵¹ Facebook page “Jewish Strength with Michael Ben Ari,” 12 October 2014.

⁵² Facebook page “We don’t buy from Jew-haters,” 20 September 2014.

⁵³ Facebook page “The Jewish Idea – Hebrew labor,” 26 July 2014.

⁵⁴ Facebook page “The Jewish Idea – Hebrew labor,” 18 July 2014.

⁵⁵ Bentzi Gopstein, Lehava (Instagram), 23 September – 3 October 2014.

⁵⁶ Facebook page “The Jewish Idea – Hebrew labor,” 22 July 2014.

Arabs. Don't give up;"⁵⁷ "The truth is, I'm simply old-fashioned: I support Hebrew labor!"⁵⁸ "Jewish doormen needed for bars in Jerusalem;"⁵⁹ "We don't buy from Arabs even if they're great guys – nothing, only Jews!!!"⁶⁰ "Don't help enemies make a livelihood when there are Jews. Go to that Jew and help him make a living!"⁶¹ "Don't employ Palestinians, they can't be trusted;"⁶² "We don'tttt finance Arabbbbbb businesssss;"⁶³ "If your hungry, there's somewhere you can eat where there are only Jews;"⁶⁴ "Let's strengthen them. A hardware and building materials store in Rishon Lezion. 100% Jews;"⁶⁵ "Hebrew labor only;"⁶⁶ an article reported that a dairy farm on Kibbutz Rosh Tzurim was replacing Arab workers with Jews, and commented that this was being done "so that things will be more pleasant;"⁶⁷ "employing Arabs... will never be worthwhile. You can't trust the goyim;"⁶⁸ "two Jewish workers needed to wash dishes etc. at a banqueting hall in Jerusalem, they want to employ Jews!!!"⁶⁹ "Home

⁵⁷ Facebook page "The Al-Yahud Gang – Center," 22 July 2014.

⁵⁸ Facebook page "Jewish Strength with Michael Ben Ari," 5 October 2014.

⁵⁹ Facebook page "The Jewish Idea – Hebrew labor," 31 July 2014.
<https://www.facebook.com/pages/%D7%94%D7%A8%D7%A2%D7%99%D7%95%D7%9F-%D7%94%D7%99%D7%94%D7%95%D7%93%D7%99-%D7%A2%D7%91%D7%95%D7%93%D7%94-%D7%A2%D7%91%D7%A8%D7%99%D7%AA/944843995530949>

⁶⁰ Facebook page "The Al-Yahud Gang – Center," 27 July 2014.

⁶¹ Facebook page "The Jewish Idea – Hebrew labor," 29 July 2014.

⁶² Facebook page "Netanel's blood is the blood of all of us," 5 October 2014.

⁶³ Facebook page "The Al-Yahud Gang – Center," 21 July 2014.

⁶⁴ Facebook page "The Jewish Idea – Hebrew labor," 17 August 2014.

⁶⁵ Facebook page "The Jewish Idea – Hebrew labor," 18 August 2014.
<https://www.facebook.com/pages/%D7%94%D7%A8%D7%A2%D7%99%D7%95%D7%9F-%D7%94%D7%99%D7%94%D7%95%D7%93%D7%99-%D7%A2%D7%91%D7%95%D7%93%D7%94-%D7%A2%D7%91%D7%A8%D7%99%D7%AA/944843995530949>

⁶⁶ The Jewish Voice, 2 October 2014.

⁶⁷ Facebook page "The Jewish Voice," 17 August 2014.

⁶⁸ The Jewish Voice, 13 October 2014.

⁶⁹ Facebook page "The Jewish Idea – Hebrew labor," 14 August 2014.

renovation work in the north – Jews only... help Jews make a living!!”⁷⁰
 “Jewish metalwork worker needed in the Kiryat Malachi area;”⁷¹ “Need
 an auto shop in the Beit Shean Valley area? This is the ideal place – 100%
 Hebrew labor;”⁷² “Jews needed for regular work outside the entrance
 to Red Sun banqueting hall in Rishon Lezion... the job requirement: To
 stand outside the hall with signs and persuade people not to hold their
 events there. NIS 30 an hour, 10 a.m. through 8 p.m.,”⁷³ “Jews buy only
 from Jews...”⁷⁴

A post on the Facebook page “The Jewish Idea – Hebrew labor” offered the following explanations about the supposed connection between the employment of Arabs and crime in various vocations:⁷⁵

“*Arab cleaning women – probably the best intelligence gatherers around, they know when the family is overseas, when they get back from work/studies – they know every corner of the house, where the safe is and where the family keeps the jewelry. Those who employ them should understand that in most cases the cleaners won’t steal anything from you – they just pass on information. But when the chance presents itself and the time is right, her family and her cousins will empty your home...

***Arab gardeners/contractors** – one of the advantages of this area of work is that it usually involves a number of people who can move around the home. You’d be amazed at the cameras we found in some of the gardens, radio and recording devices. They camouflage them in the plants/plant pots/trees/water sprinklers... For example: in one home we

⁷⁰ Facebook page “The Jewish Idea – Hebrew labor,” 13 August 2014.

⁷¹ Facebook page “The Jewish Idea – Hebrew labor,” 19 October 2014.

⁷² Facebook page “The Jewish Idea – Hebrew labor,” 19 August 2014.

⁷³ Facebook page “The Jewish Idea – Hebrew labor,” 20 August 2014.

⁷⁴ Facebook page “The Jewish Idea – Hebrew labor,” 30 October 2014.

⁷⁵ Facebook page “The Jewish Idea – Hebrew labor,” 23 October 2014
https://www.facebook.com/permalink.php?story_fbid=989237704424911&id=944843995530949

found a radio receiver that runs for up to 72 hours, and when the time is right and the house is completely empty, even just for five minutes, then it is burgled.

***Arab taxi drivers** – don't give them your exact address, tell them one street to either side. Don't go up to your apartment while the taxi is still there. But this isn't the main concern. The threat is of attempted crimes after you get out of the taxi. The driver updates someone who is working with him and lets you off in an area planned for kidnapping/rape/robbery. Many of us are familiar with the late Shelly Dadon, but anyone who has access to the monthly reports of the prime minister, the police, the Knesset, Internal Security, and so on... knows how often this happens. You'd be astonished how many reports they receive that you don't hear about.

***Use of credit cards** – when making purchases in Arab villages or in makeshift places, never use Visa! They keep the data, don't imagine anything else. And the data is accompanied by other personal details, such as the I.D. number and address, and the ability to use the details of your credit card. (Be careful of forged banknotes and don't make transactions in large sums).

***Arab auto shop / car wash workers** – while you leave your car with the shop / car wash, they learn how to break into it properly, and sometimes they fix a device to open the door or the trunk without a key. They have time to check your security system and look in the glove compartment for documents/receipts/addresses and so on... Yes, they photocopy them all!"

Toward the end of Operation Protective Edge, Foreign Minister Avigdor Lieberman published a post on his official Facebook page in response to a strike by Arab businesses. He urged Israeli citizens to boycott the shops of these Arab businesspeople in the future: "I urge you all not to buy any

more from the shops and businesses of those in the Arab sector who are participating today in the general strike called by the Monitoring Committee of Israeli Arabs in sympathy with the residents of Gaza and against Operation Protective Edge.”⁷⁶

The mayor of Nazareth Illit was quoted as saying: “All the [Arab] merchants are crying now that the Israelis aren’t coming. But what can you do? We’d rather you cried instead of the mothers of our hero soldiers. We don’t buy from enemies!”⁷⁷

Some of the calls to boycott businesses that employ Arabs, and to insist on Jewish labor, take the form of demands not to employ Arabs due to the perception that they are enemies, murderers, or assailants. The following are some typical statements of this kind:

“When you support Hebrew labor, you direct your money to strengthening the Jewish community instead of strengthening its enemies!”⁷⁸

“Lieberman is with us. We’ll keep on spreading this page and the whole nation will stop buying from anyone who employs Arabs (terrorists)!!!”⁷⁹

“You don’t help enemies to make a living!”⁸⁰ “We won’t help enemies make a living! Stop supporting all the terrorists in Israel;”⁸¹ “We won’t help Hamas terrorists and those who cut people’s heads off to make a living;”⁸²

⁷⁶ Official Facebook page of Avigdor Lieberman, 21 July 2014:

<https://www.facebook.com/AvigdorLieberman/posts/832092906803659>

On 23 July 2014, IRAC contacted the attorney general on its own behalf and on behalf of the Coalition against Racism in Israel and asked him to open a criminal investigation against Minister Lieberman on suspicion of incitement to racism due to this publication. As of the time of writing, the attorney general has not forwarded his response.

⁷⁷ Facebook page “We don’t buy from enemies,” 30 July 2014.

https://www.facebook.com/permalink.php?story_fbid=311023055737984&id=302756253231331

⁷⁸ Facebook page “The Jewish Idea – Hebrew labor,” 19 July 2014.

⁷⁹ Facebook page “The Jewish Idea – Hebrew labor,” 20 July 2014.

⁸⁰ Facebook page “The Jewish Idea – Hebrew labor,” 22 July 2014.

⁸¹ Facebook page “The Jewish Idea – Hebrew labor,” 22 July 2014.

⁸² Facebook page “Jewish Strength with Michael Ben Ari,” 29 September 2014.

“Employers – don’t employ Arabs, period. Otherwise you’re an accomplice in murder;”⁸³ “We don’t forgive and don’t forget – just DON’T buy from them!!!”⁸⁴ “No way that we’ll employ Israeli Arabs who have a blue ID card – don’t employ traitors!!!”⁸⁵ “Boycott the [Arab] sector. Traitor? We don’t buy!”⁸⁶ “Professional floor layer needed for a big job in Jerusalem, Jewish only... share so that we can find a Jew and not use our enemies!!!”⁸⁷ “The Osher Ad [supermarket] branch in Givat Shaul, Jerusalem doesn’t employ enemies;”⁸⁸ “Hebrew labor only. Foreign and Arab workers lead to idol worship, incest, and bloodshed;”⁸⁹ “Stop employing enemies! No more terrorists wandering around among us! No more Arab workers!”⁹⁰ “Every Jew should do a little something in his hometown for the sake of the Holy Land... Don’t buy from Arabs and terrorists in the Land of Israel and don’t give them a livelihood. Or you can spread the teachings of Kahane;”⁹¹ “The merchants in Akko market complain that business is slow. What can we say – we don’t buy from enemies!”⁹² “At a time when the Israeli Arabs are celebrating bloodshed, it’s time to say – enough! Don’t give Arabs a livelihood and don’t employ them!”⁹³ “These terror attacks will continue

⁸³ Facebook page ‘Netanel’s blood is the blood of all of us,’ 1 October 2014.

⁸⁴ Facebook page “We don’t buy from Jew haters,” 28 September 2014.

⁸⁵ The “About us” section on the Facebook page “Boycott the Israeli Arabs” https://www.facebook.com/pages/%D7%97%D7%A8%D7%9D-%D7%A2%D7%9C-%D7%A2%D7%A8%D7%91%D7%99%D7%99-%D7%99%D7%A9%D7%A8%D7%90%D7%9C/1467314896849253?sk=info&tab=page_info

⁸⁶ Facebook page “Boycott the enemy within,” 26 September 2014.

⁸⁷ Facebook page “The Jewish Idea – Hebrew labor,” 17 August 2014.

⁸⁸ Facebook page “The Jewish Idea – Hebrew labor,” 17 August 2014.

⁸⁹ The Jewish Voice, 6 October 2014.

<http://www.hakolhayehudi.co.il/news/%D7%94%D7%A9%D7%9E%D7%90%D7%9C-%D7%94%D7%A7%D7%99%D7%A6%D7%95%D7%A0%D7%99-%D7%A0%D7%92%D7%93-%D7%9C%D7%95%D7%97-%D7%A2%D7%91%D7%95%D7%93%D7%94-%D7%A2%D7%91%D7%A8%D7%99%D7%AA-662>

⁹⁰ The Jewish Idea – Hebrew labor, 17 September 2014.

⁹¹ Facebook page “The Al-Yahud organization – Center – official,” 28 September 2014.

⁹² Facebook page “We don’t buy from enemies,” 28 July 2014.

⁹³ Facebook page “Hebrew-Zionist employment,” 28 July 2014.

if you keep on employing Arabs!”⁹⁴ “Boycott Arab businesses!! We’re sick of funding terror. We’re sick of feeding the Arabs while they speak out against the country and support terror;”⁹⁵ “We all promise not to provide income for the Arab sector that lives here and calls for the destruction of the state;”⁹⁶ “Don’t give them guns. Don’t give them tractors. Don’t give them a livelihood;”⁹⁷ “Keep it up, we don’t give enemies a livelihood!”⁹⁸

In response to an article on the website “The Jewish Voice” reporting that “An Arab attempted to stab a Jewish man who came to do shopping in the village of Husan,” talkbacks were posted calling for a boycott and insulting Arabs.⁹⁹ Another article on the page reported that “A Jewish man who came to fill his car with gas in the village of Nabi Elias was mugged by Arabs.” One of the talkbacks commented “He deserves it!!! Why’s he going to Arabs?”¹⁰⁰ The Facebook page “The Jewish Voice” published a post referring to two reports about attacks on Jews who went shopping or refueled their cars in Arab villages. The report was entitled, “So what do you think? Should we go and buy from them?” The talkbacks to the article included comments such as: “We mustn’t buy from them;” “Crazy Jews! To save a few shekels they’re willing to support the enemy and endanger their life! They value money more than life!” “Why are you still buying from them, I don’t get it;” “If you don’t buy from Arabs you don’t get hurt!”¹⁰¹

Some of the posts opposing the employment of Arabs include particularly offensive photographs. An example of this was a post including the message:

⁹⁴ Facebook page “Hebrew-Zionist employment,” 4 August 2014.

⁹⁵ Facebook page “Boycotting the enemy within,” 15 September 2014.

⁹⁶ Facebook page “Boycotting the enemy within,” 17 September 2014.

⁹⁷ Facebook page “They won’t extinguish Lehava,” 4 August 2014.

⁹⁸ Facebook page “They won’t extinguish Lehava,” 5 August 2014.

⁹⁹ Facebook page “The Jewish Voice,” 20 July 2014.

¹⁰⁰ Facebook page “The Jewish Voice,” 20 July 2014.

¹⁰¹ Facebook page “The Jewish Voice,” 20 July 2014.
<https://www.facebook.com/photo.php?fbid=704054442976980>

“This is how they beg for work!!! We don’t give our enemies a livelihood... A moving company, Jewish labor only, with a certificate of approval from Lehava, Shabbat observant, reliable, professional, and polite!!!”¹⁰² This text was accompanied by the following photograph:



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Campaigns were launched urging Jews to boycott businesses that employ Arabs. For example, a group was launched to oppose the Rami Levy supermarket chain, changing the business’s name to give it an Arab sound: **“I also do not shop at Ramzi Lawi.”** The page declared: **“When you buy from Ramzi, you’re actually financing our enemies.”¹⁰⁴**



Ramzi Lawi Hashikma Marketing
Chicken + assimilation
for one shekel!

¹⁰² Facebook page “Jerusalem moving services,” 21 July 2014
<https://www.facebook.com/138916066599/photos/a.10152092928226600.1073741826.138916066599/10152585034636600/?type=1&theater>

¹⁰³ Facebook page “The Jewish Idea – Hebrew labor,” 13 August 2014.

¹⁰⁴ <https://www.facebook.com/ramzilawe/photos/a.278600965653408.1073741828.278592802320891/297343893779115/?type=1&theater>



Don't give them **guns**

Don't give them **tractors**

Don't give them a **livelihood**



Don't employ enemies!

Lehava



receipt from Rami Levy with
overprint:

"Thank you [in Arabic].
With your help we'll buy more
missiles!"



talkback on the Facebook page
"I also don't buy from Ramzi Lawi:"

"I hate going into Rami Levy because I feel like I'm in an Arab village and all the time I curse them silently!!! They talk loudly in Arabic and look at me or at any girl that passes without any shame!!! And I don't know how to keep quiet... So I'm like, what are you looking at?!? In a mad tone, LOL, and they make some excuse like no, they're looking at the tomatoes... Watch out or you'll see those tomatoes close up smashed against your face, you stinking Arab!!!!



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When you provide a living for Jew haters you fund terror
Don't buy from Jew haters!!!

Economic boycott

The right wing is demonstrating its support



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Let's stop helping the Arabs make a living!

Don't have your car washed by Arabs
Don't eat at Arab restaurants
Don't get into a taxi with an Arab driver
Stop buying Arab products
Don't buy things from Arab kids at intersections

That's it. Period!

If someone tells us to put our head down, we'll put them down on all fours. Economic damage is the only thing that will make the Arabs understand that they can't survive without us. If the government wants to keep giving them electricity and money, at least we can stop them from enjoying our private money. **Share with everyone! Our strength is in our unity!**

Anti-Arab Statements and Demands for Boycotts due to Fear of Assimilation ***(4.97% of statements)***

Serious racist and violent statements are presented under the guise of a war against assimilation, focusing on intimate relations between Jewish women and Arab men, and seeking to protect "the virtue of Jewish women"

¹⁰⁵ Facebook page "Death penalty for terrorists," 5 August 2014.

¹⁰⁶ Facebook page "Jewish Strength with Michael Ben Ari," 26 August 2014.

and to save them from Arab men.¹⁰⁷ This category includes general anti-Arab statements, calls to attack Arabs physically and to boycott them and remove them from the Israeli public domain due to fear of assimilation. The following are typical statements of this kind:

“Arab, please think twice before you touch a Jewish woman!”¹⁰⁸ “Jewish women must understand that they mustn’t even go near these animals!”¹⁰⁹ “They hate Jews and stand there whispering and looking at our young women and girls with a crazy and scheming look!”¹¹⁰ “Whoever employs Arabs shouldn’t be surprised when they harass his daughters;”¹¹¹ “The Arabs assimilation with us is manifested in its full force by the fact that they are among us everywhere, in the supermarket, in the grocery store, at the greengrocer’s, washing stairwells, renovating buildings – in every little hole they are among us. Like a dormant bomb, ticking and waiting for the appointed time, may they not be successful, may their name and memory be obliterated. It can be by committing suicide on top of us or murdering, or if they’re already running around between our feet – why not take Jewish girls and uproot the continuity of our people?! The root of the assimilation problem begins and ends with the fact that they live among us and nobody says a word?!”¹¹² “Jerusalem Beach in Tel Aviv. Several Arab guys with Jewish women. Anyone who’s in the area should explain to them, legally of course, that during war time the King’s

¹⁰⁷ For further discussion of racism focusing on relations between Jewish women and Arab men, see: Ruth Carmi, What if an Arab Hit on Your Sister? Racism and Gender in Israel (Israel Religious Action Center, the Israel Movement for Progressive Judaism, 2014)

¹⁰⁸ Bentzi Gopstein Lehava organization (Instagram), 23 September – 3 October 2014.

¹⁰⁹ Bentzi Gopstein Lehava organization (Instagram) <http://instagram.com/p/s5PTydyZR/>

¹¹⁰ Facebook page “The Jewish Idea – Hebrew labor,” 19 September 2014.

¹¹¹ The Jewish Voice, 2 October 2014

<http://www.hakolhayehudi.co.il/news/%D7%A1%D7%A2%D7%A8%D7%94-%D7%91%D7%90%D7%95%D7%9C%D7%A4%D7%A0%D7%94-%D7%94%D7%9E%D7%A0%D7%A7%D7%99%D7%9D-%D7%94%D7%A2%D7%A8%D7%91%D7%99%D7%9D-%D7%94%D7%98%D7%A8%D7%99%D7%93%D7%95-%D7%A0%D7%A2%D7%A8%D7%95%D7%AA-630>

¹¹² Facebook page “The Jewish Idea – Hebrew labor,” 17 September 2014

daughters should guard themselves.”¹¹³ The Facebook page of supporters of Lehava presented the “danger of assimilation” as a plan by Arabs to “lower the racial standard of the Jews by poisoning individuals, with the goal of subduing the Jewish people.”¹¹⁴

The Facebook page of the “Al-Yahud Gang” urged people to demonstrate outside the “Yesh Bashchunah” supermarket in the Ramat Eshkol neighborhood of Jerusalem due to “harassment of Jewish girls by Arabs.” The participants in the demonstration were asked to prepare signs declaring “Jewish girls for the Jewish people,” “Employing Arabs equals assimilation,” and “Arab, be careful, my sister isn’t up for grabs.”¹¹⁵

Calls to Employ Violence against Arabs (5.15% of the statements)

This category includes explicit and concrete calls to act violently against Arabs. The following are some representative examples:

“Burn Shuafat and all its residents;”¹¹⁶ “Get together with all your neighbors and go out to them, even at night. Surprise them. Without any laws. Break their bones;”¹¹⁷ “Instead of bullshitting around, go out into the streets and start showing these scum who is the master of the house here;”¹¹⁸ “If there are few men here, let’s go to avenge Netanel (Arami). I’m up for it;”¹¹⁹ “In order to defend a Jew from an invader or terrorist [also known as bacteria] we are physically and literally willing to be terrorists,

¹¹³ Facebook page “They won’t extinguish Lehava,” 30 July 2014.

¹¹⁴ Facebook page “Lehava supporters page – fighting assimilation,” 14 September 2014.

¹¹⁵ Facebook page “The Al-Yahud Gang,” 24 July 2014.

¹¹⁶ Facebook page “Jerusalem residents demand live fire against rioters,” 12 October 2014.

¹¹⁷ Facebook page of Aryeh King, 23 July 2014
<https://www.facebook.com/photo.php?v=310434099128936>

¹¹⁸ Facebook page “Netanel’s blood is the blood of all of us,” 29 October 2014.
<https://www.facebook.com/kolano.netanel/photos/a.748469705200327.1073741828.748058505241447/759831800730784/?type=1&theater>

¹¹⁹ Facebook page “Netanel’s blood is the blood of all of us,” 4 October 2014.

and if they tell us that a whole promenade in the north is full of these viruses and you can't move there, we'll come there from the center of the country with organized transport until it stops and they put their heads down;"¹²⁰ "Needed – revenge. For details contact the nearest Arab;"¹²¹ "I wish I could come, I'm from Tirat Hacarmel in the north and I don't have a car, we should torch their villages and burn these sons of bitches."¹²²

A report on damage caused to a branch of the religious youth movement Bnei Akiva in Jaffa included the talkback "After this, the Jews won't be able to remain silent anymore and they'll do a Price Tag [Jewish terror attack]..."¹²³ The same website published demands to attack Arabs in response to attacks on Jews¹²⁴ and a call to shine lasers in the eyes of Arab drivers.¹²⁵

Calls of "Death to Arabs" and Support for Anti-Arab Violence ***(25.04% of the statements)***

In contrast to the previous category, these statements do not constitute concrete calls for violence, but rather the generalized slogan "Death to Arabs" and expressions of support for violence against Arabs. Typical statements in this category include:

¹²⁰ Facebook page "The Al-Yahud Gang – Center," 2 August 2014.

¹²¹ Facebook page "The Jewish Voice," 14 October 2014.

¹²² Facebook page "Baruch Marzel – the official page," 23 October 2014.

¹²³ The Jewish Voice 5 October 2014
<http://www.hakolhayehudi.co.il/news/%D7%A1%D7%9B%D7%A0%D7%AA-%D7%97%D7%99%D7%99%D7%9D-%D7%9C%D7%94%D7%92%D7%99%D7%A2-%D7%9C%D7%A4%D7%A2%D7%99%D7%9C%D7%95%D7%AA-%D7%91%D7%A1%D7%A0%D7%99%D7%A3-651>

¹²⁴ The Jewish Voice, 8 September 2014.

¹²⁵ The Jewish Voice, 9 September 2014.

"I hope the Arabs die, there isn't a good Arab!"¹²⁶ "May the name of the Arabs be obliterated;"¹²⁷ "May their name be obliterated, may the seed of Amalek be destroyed;"¹²⁸ "I hope the Arabs die, these scum who only make things bad for us in 'our' country!"¹²⁹ "May the name of the Arabs be obliterated, it never ends with them;"¹³⁰ "Death to Arabs;"¹³¹ "A nation of animals that should be obliterated from the earth. All they bring is death and blood;"¹³² "A neat Arab is an Arab spread out all over the street;"¹³³ "Let all the Arabs burn, and let's start with the ones we know;"¹³⁴ "May the Arabs' name be obliterated, you can't trust the goyim;"¹³⁵ "One day we'll arrange all these Arabs in a pyramid, throw gasoline on them, and set them on fire;"¹³⁶ "Arabs go burn inshallah ['God willing' in Arabic], we should crush your skulls;"¹³⁷ "Damn Arabs!!! Human animals, we should build a giant Marmara [in reference to the Gaza flotilla raid in 2010] for them and throw them into the sea;"¹³⁸ "They are Amalek and it is a great

¹²⁶ Facebook page "The Jewish Voice," 4 August 2014.

¹²⁷ The Jewish Voice (YouTube), 8 October 2014.

¹²⁸ Facebook page "The Jewish Voice," 14 September 2014.

¹²⁹ Facebook page "The Jewish Voice," 16 September 2014.

¹³⁰ Facebook page "Al Yahud – official," 21 September 2014.

¹³¹ Facebook page "Jewish Strength with Michael Ben Ari," 18 September 2014.

¹³² Facebook page "Justice and Law," 17 September 2014.

¹³³ Facebook page "Boycott the enemies," 28 August 2014.

¹³⁴ Facebook page "Netanel's blood is the blood of all of us," 27 October 2014
<https://www.facebook.com/kolano.netanel/photos/a.748469705200327.1073741828.748058505241447/763451547035476/?type=1>

¹³⁵ Facebook page "Netanel's blood is the blood of all of us," 27 October 2014
<https://www.facebook.com/kolano.netanel/photos/a.748469705200327.1073741828.748058505241447/763451547035476/?type=1>

¹³⁶ Facebook page "Netanel's blood is the blood of all of us," 21 October 2014
<https://www.facebook.com/kolano.netanel/photos/a.748469705200327.1073741828.748058505241447/759831800730784/?type=1&theater>

¹³⁷ Facebook page "Netanel's blood is the blood of all of us," 19 October 2014
<https://www.facebook.com/kolano.netanel/posts/758617764185521>

¹³⁸ Facebook page "Netanel's blood is the blood of all of us," 5 October 2014. "Marmara" in the comment is an allusion to the Mavi Marmara, the Turkish vessel involved in the flotilla to Gaza that was stormed by Israeli forces.

commandment to eliminate them;”¹³⁹ **“We need some more people like Rabbi Baruch Goldstein, may a pious man’s memory be a blessing, to wake up the government of the hypocritical and feeble left-winger Bibi.”**¹⁴⁰

The Facebook page **“Jerusalem residents demand live fire against rioters”** published a talkback declaring **“Burn Shuafat and all its residents.”**¹⁴¹

The Facebook page **“We all support expelling the extreme left”** published a talkback declaring **“We all favor firing Lau missiles at the homes of the Arabs, may their name be obliterated.”**¹⁴² People reacted joyfully to photographs of Arabs being beaten in Jerusalem – one talkback declared: **“Very good, keep up the good work with all the Arabs, may their name be obliterated.”**¹⁴³

The Facebook page of The Jewish Voice published a report about a defendant charged with attempting to assault Arabs and with spraying anti-Arab slogans. One of the talkbacks declared **“You’re the best, hero of Israel.”**¹⁴⁴ Another report described the cutting down of Arab-owned olive trees by Jews. Talkbacks included **“May there be many more [such attacks]!”**¹⁴⁵ and **“What a happy day... there hasn’t been a revenge attack for ages.”**¹⁴⁶

The Facebook page **“The Al-Yahud Gang – center”** asked its readers to offer their opinions regarding Yosef Ben-David, one of those accused of murdering

¹³⁹ Facebook page **“We’re all Zionists,”** 8 October 2014.

¹⁴⁰ Facebook page **“Baruch Marzel – the official page,”** 9 October 2014. Baruch Goldstein murdered 29 Palestinian Muslim worshippers at the Cave of the Patriarchs in Hebron in February 1994.

¹⁴¹ Facebook page **“Jerusalem residents demand live fire against rioters,”** 7 October 2014. Shuafat is a Palestinian neighborhood in north Jerusalem.

¹⁴² Facebook page **“We all support expelling the extreme left,”** 12 October 2014.

¹⁴³ The Jewish Voice, 27 July 2014.

¹⁴⁴ The Jewish Voice, 18 August 2014.

¹⁴⁵ The Jewish Voice, 6 October 2014.

¹⁴⁶ The Jewish Voice, 6 October 2014.

the Palestinian youth Muhammad Abu Khdeir. The following were some of the talkbacks:¹⁴⁷ **“A pious and innocent man;” “Heroes of Israel!!!!” “You have a sure place in heaven, it’s a commandment to kill Amalek, may God bless you, way to go for your courage;” “If someone tries to kill you, rise up and kill him first... An eye for an eye and a son for a son, may there be many more dead Arabs;” Yosef Ben David – way to go, twice a hero! That’s what we need, for them to feel what we feel;” “He’s a real king! If he’d have called me, I’d have come along too;” “He’s way cool, it’s just a pity they caught him!!!” “He’s a KING, death to the Arab sonsofbitches;” “If only all the Jews acted like him, there aren’t any innocent people in war (apart from the fact that this Arab was anything but innocent), and any Ishmaelite in the Land deserves to die!!!” “I’d burn a few more of them;” “I salute him, at last someone’s a real man!”**

During Operation Protective Edge, Rabbi Dov Lior, the rabbi of the settlement of Kiryat Arba near Hebron, published a Halachic (religious) opinion on his Facebook page permitting the injuring and punishment of civilians in the Gaza Strip not involved in the hostilities. He stated that it is permissible **“even to order the destruction of all of Gaza.”** The talkbacks included the following comments: **“At last a clear, value-based Zionist opinion. We’re fed up of sacrificing our best sons to protect the lives of the Palestinazi enemy. Totally eliminating Gaza will save both Jewish and Arab lives. Any other solution will cause further bloodshed.”**¹⁴⁸

¹⁴⁷ All the talkbacks appeared on the Facebook page “The Al-Yahud Gang – Center” on 12 August 2014.

¹⁴⁸ Facebook page of Rabbi Dov Lior, 22 July 2014
https://he-il.facebook.com/Rav.Dov.Lior/photos/a.247523521949614.54236.190542387647728/717102361658392/?type=1&relevant_count=1

On 23 July 2014, IRAC contacted Justice Minister Zippi Livni on its own behalf and on behalf of the Coalition Against Racism and demanded that Rabbi Dov Lior, who at the time he made the comment served as rabbi of Kiryat Arba, face disciplinary action. As of the time of writing, no reply has been received from the Ministry of Justice.

From the Facebook page “The Al-Yahud Organization – Haifa and the Krayot:”



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“Hating Arabs isn’t racism, it’s values! Israel demands revenge”

Specific Incitement against Arab Citizens of Israel (5.86% of statements)

These statements could be included in some of the above categories, but their unique feature is that they are specifically addressed at the Arab citizens of Israel (as distinct from Palestinians in the West Bank or Gaza, for example, who are not citizens of Israel). The statements attribute negative characteristics to this population and define its members as murderers and enemies. The following are some typical examples:

“He isn’t an Israeli. He’s an Arab..”¹⁵⁰ “An Israeli youth??? In his dreams!!! A miserable towel head;”¹⁵¹ “Israeli Arabs – daily terror;”¹⁵² “All the Israeli Arabs do is harm Jews and plot murder and sabotage against them;”¹⁵³ “I’ve always claimed that the Israeli Arabs are a fifth column (not all of

¹⁴⁹ Facebook page “The Al-Yahud Organization – Haifa and the Krayot,” 21 July 2014.

¹⁵⁰ Facebook page “Jewish Strength with Michael Ben Ari,” 12 October 2014.

¹⁵¹ Facebook page “Jewish Strength with Michael Ben Ari,” 12 October 2014.

¹⁵² Facebook page “Netanel’s blood is the blood of all of us,” 29 October 2014.
<https://www.facebook.com/kolano.netanel/photos/a.748469705200327.1073741828.748058505241447/763451547035476/?type=1>

¹⁵³ Facebook page “Boycott the enemy within,” 27 September 2014.

them, 99%), what else needs to happen for us to realize who and what they are???"¹⁵⁴ "The time's come to throw out all the Arabs, and quick!"¹⁵⁵ "What are the Israeli Arabs demanding in return for normalizing their relations with the state and ending their acts of treason???"¹⁵⁶ "Time after time the Israeli Arabs show us how hypocritical and corrupt they are, and above all how disloyal, and to all the Arabs who send us private messages saying that they're not like the others – we don't believe you either and we'll never believe, as the Bible says 'Esau hated Jacob,'"¹⁵⁷ "Here are some pictures straight from the demonstration in Jaffa against the Jew-hating terrorists who live among us, the biggest cancer, and this proves once again that Kahane was right!!!"¹⁵⁸ A talkback claimed that it is permissible to attack Israeli Arabs because this is part of the war against Israel's enemies;¹⁵⁹ it was claimed that the Arabs of East Jerusalem constitute "the enemy within the city."¹⁶⁰ The Facebook page of former Member of Knesset Michael Ben Ari ("Jewish Strength") published a video clip in which Ben Ari explained that "Israeli Arabs are the enemy and a real danger."¹⁶¹ The Facebook also declared "Gaza and Sakhnin – the same monster with the same intentions!"¹⁶²

¹⁵⁴ Facebook page "Boycott the enemy within," 15 September 2014.

¹⁵⁵ The Jewish Voice, 6 August 2014.

¹⁵⁶ Facebook page "Boycott the enemy within," 20 September 2014.

¹⁵⁷ Facebook page "The Al-Yahud Organization – Center – official," 17 September 2014.

¹⁵⁸ Facebook page "The Al-Yahud Organization – Center – official," 21 September 2014.

¹⁵⁹ The Jewish Voice, 25 July 2014.

¹⁶⁰ Facebook page "Baruch Marzel – the official page," 20 September 2014.

¹⁶¹ Facebook page "Jewish Strength with Michael Ben Ari," 23 July 2014.
<https://www.facebook.com/photo.php?v=705053566235584>

¹⁶² Facebook page "Jewish Strength with Michael Ben Ari," 17 September 2014.



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“When the war’s over...

We won’t forget you...

‘Israeli Arabs’ the fifth column...

We don’t buy!

We don’t employ!

We don’t give a livelihood!

¹⁶³ Facebook page “The Al-Yahud organization – Center – official,” 31 August 2014.

The Unique Character of the Internet

"The internet exists throughout the world and nowhere at the same time. To be more precise: access to the internet and its influence are worldwide; but its reality is nowhere."

Justice Solberg¹⁶⁴

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Technology in itself is neither good nor bad. However, it changes reality and creates a new world of possibilities and limitations. The internet has changed the way people communicate, connect, buy, create, and search for information. The internet has reshaped arenas in the social, commercial-economic, and public-political domains, and in all probability this change will continue for many decades. The internet embodies all the possibilities offered by the conventional media – written, audio, picture, and video, and creates new possibilities for communication. A unique phenomenon of the internet is the presence of social networks. Social networks permit the nurturing of communities of users and create bonds between people around common themes, such as work-related issues, romantic relationships, music, and many other shared interests. These platforms allow individuals to communicate with each other through private messages, in groups, or publicly among all users. Social networks allow users to send private messages, upload photographs and video clips, join groups based around shared fields of interest, share independent creative projects, such as music and art, and engage in direct and live conversations through chat facilities.¹⁶⁵

Various characteristics make the internet a unique medium. The internet presents very few threshold barriers in terms of price and convenience of

¹⁶⁴ Req. Adm. App. 3782/12 Israel Police v *Israel Internet Association*, 24 March 2010.

¹⁶⁵ Nadine E. McSpadden, *Slow and Steady Does Not Always Win the Race: The Nuremberg Files Web Site and What It Should Teach Us About Incitement and the Internet*, INDIANA L. J. 76, 485, 487 (2001) <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1984&context=ilj>; Niva Elkin-Koren and Michael Birnhack (eds.), "Introduction: Law and Information Technology," *Legal Network: Law and Information Technology 11* (Niva Elkin-Koren and Michael Birnhack, eds., 2011) (in Hebrew).

use and imposes almost no spatial or geographical obstacles.¹⁶⁶ It facilitates immediate response and offers users the option of concealing their identity – i.e. of expressing themselves anonymously.¹⁶⁷ Unlike radio or television, the internet is a user-driven technology that encourages direct communication with very little intervention through editing, production, or censorship.¹⁶⁸ The internet is open to anyone who wishes to publish material and express themselves without any prior screening.¹⁶⁹ Above all, the internet provides real-time access to an enormous audience, rapidly, and virtually without cost.¹⁷⁰ Websites and Facebook pages thus enjoy a potential audience of millions – any person with an internet connection.¹⁷¹

The unique characteristics of the internet make it one of the most important means of communication today. The internet is a democratic tool that can help human empowerment and development and realize freedom of expression. However, these same characteristics, including the illusion of anonymity and the lack of supervision, mean that the internet is also a particularly attractive tool for groups that seek to disseminate hate and incite racism and violence.¹⁷² These groups seek to disseminate messages that are generally incompatible with mainstream social norms, and it is reasonable to assume they would struggle to pass through the filter of content mediators

¹⁶⁶ McSpadden, note 165 above, 488; Yifat Hollander, Background Document: *The Limits of Freedom of Expression on the Internet*, 6 (Knesset Research and Information Center, 2001) (in Hebrew).

¹⁶⁷ Ibid.

¹⁶⁸ McSpadden, note 165 above, 505; Irit Negbi, "The Internet, Misogyny, and Freedom of Expression," *Mishpat U-Mimshal* 15 499, 506 (5773) (in Hebrew); Raphael Cohen-Almagor, "Fighting Hate and Bigotry on the Internet," 3 POLICY & INTERNET, Article 6, 1 (2011) <http://www.hull.ac.uk/rca/docs/articles/hate-bigotry.pdf>.

¹⁶⁹ Negbi, note 168 above, 506.

¹⁷⁰ McSpadden, note 165 above, 497, 505.

¹⁷¹ Ibid., 505.

¹⁷² Chaim Wissmonsky, "Penalization in Computer Crimes," *Legal Studies* 24 81, 89 (2008) (in Hebrew); John P. Cronan, *The Next Challenge for the First Amendment: The Framework for an Internet Incitement Standard*, 51 CATH. U. L. REV. 425, 425-426 (2002) <http://scholarship.law.edu/cgi/viewcontent.cgi?article=1330&context=lawreview>.

in the traditional media (press, television, and radio).¹⁷³ The internet enables these groups to disseminate their ideology to large audiences with ease and at minimal cost.¹⁷⁴ Groups that previously disseminated their ideology by means such as leaflets and posters, or through emails or a website, can now expand their circle of influence exponentially at the click of a button.¹⁷⁵ At the time of writing, for example, the Facebook page of the Lehava organization has 24,729 followers, while the page Jewish Strength with Michael Ben Ari has 35,495 followers. By way of comparison, the official page of the Israeli Labor Party had 12,202 followers at the time of writing, while the Likud page had 18,011 followers. The internet enables these groups not only to spread their ideology, but also to raise funds and organize activities.¹⁷⁶ Thus, for example, following the terror attack in the Har Nof neighborhood of Jerusalem on 18 November 2014, in which five people were killed, two demonstrations were organized via Facebook, one by the Chords Bridge at the entrance to the city and the other a “procession of rage” to the Palestinian neighborhood of Jabal Mukaber. The aim of both demonstrations was to terrorize the Arab population. The calls to organize the demonstrations, as well as emotive and inflammatory demands for physical attacks on Arabs, appeared on the Facebook pages of Lehava, Baruch Marzel, Michael Ben Ari, Bentzi Gopstein, “the Shadow,” and the page “Right-wingers.”¹⁷⁷

In terms of the target population of these online statements of incitement, two main groups can be suggested. The first includes people who already identify with this content and who actively seek out inciting or racist content on the internet. The second is the general public, who are exposed

¹⁷³ Negbi, note 168 above, 507.

¹⁷⁴ *Ibid.*; McSpadden, note 172 above, 426.

¹⁷⁵ Cronan, note 172 above, 426.

¹⁷⁶ Cohen-Almagor, note 168 above, 1.

¹⁷⁷ Roi Chiki Arad, “After the Terror Attack, Jerusalem Descends deeper into Fear and Hatred,” *Ha’aretz*, 18 November 2014, <http://www.haaretz.co.il/news/education/premium-1.2489623> (in Hebrew); “Right-wingers in City Promise: Revenge against Arabs,” *mynet* 24 November 2014, <http://www.mynet.co.il/articles/0,7340,L-4594919,00.html>.

to online incitement by chance. The nature of online browsing means that people may access numerous and diverse sites whose content is unknown to them in advance, including inciting sites.¹⁷⁸ Thus, for example, internet users who have a limited knowledge of technology or the political world may readily find themselves on inciting websites that those with a deeper understanding of technology or current affairs would avoid. Indeed, due to the fierce competition for people's attention, the more extreme, offensive, and inflammatory the content on a website or Facebook page, the greater the chance that it will attract attention.¹⁷⁹ This further enhances the existing bias toward extremist statements.

As for the group of people who already identify with incitement, some commentators suggest that the impact of exposure to inciting comments by these groups is less significant, since those involved already support the positions expressed.¹⁸⁰ However, even if the audience exposed to the inciting content is one that has already sought such content online, the availability and broad distribution of such content suggests that it may now be accessed more readily than in the past.¹⁸¹

Moreover, individuals who already tend to racist and violent views, and who are now exposed to mass content at the click of a mouse, may be liable to adopt even more extreme views and perhaps to act violently as the result of this exposure. For example, in the context of incitement to violence, the Supreme Court ruled that "the examination of the real possibility of violence is not directed necessarily at a target audience comprised of reasonable people, but also at an audience liable to include persons who are not reasonable or normative, at least during the period relevant to

¹⁷⁸ Niva Elkin-Koren, "The New Mediators in the Virtual 'Market Place,'" *Mishpat U-Mimshal* 6 381, 417 (5763).

¹⁷⁹ Negbi, note 168 above, 508.

¹⁸⁰ Delgado, note 1 above, 329.

¹⁸¹ *Ibid.*, 337; McSpadden, note 165 above, 503.

the publication.”¹⁸² The same is true of online incitement: its impact is not diminished by the fact that it is directed at those who were looking for such content; this merely reinforces and exacerbates the inciting views.

As for the second group – those who find themselves by chance viewing inciting Facebook pages or websites – they are, at the very least, exposed to a negative depiction of Arabs, and in this sense the incitement may secure its goal of changing people’s opinion about the Arab minority in Israel. This is particularly true in the case of young people, who mostly have no experience reading inciting texts critically, and are liable to accept the content at face value.

It seems that people express themselves more freely on the internet than when they are not sitting at a keyboard. The ability to make spontaneous, instant, and anonymous comments with minimal mediation creates a “Wild West” and no-holds-barred atmosphere. In ordinary social conduct, individuals curb their own behavior in order to be part of accepted society. By contrast, the internet facilitates irresponsible and unbridled behavior.¹⁸³ In many cases, the net result of all these factors are particularly violent statements, as is evident in our findings.¹⁸⁴

From the standpoint of those who engage in incitement, the internet reinforces their own racist and violent worldview. The fact that they enjoy a large and sympathetic following strengthens their conviction that their approach is a popular one that enjoys broad-based support, despite the fact that this is not necessarily the case.¹⁸⁵

¹⁸² Perm.Crim.App. 2533,3066/10, *State of Israel v Michael Ben Hurin et al.*, Tak-El 2011(4), 4323, p. 7.

¹⁸³ Negbi, note 168 above, 506.

¹⁸⁴ *Ibid.*, 502; Hollander, note 166 above, 6; Dominic McGoldrick, “The Limits of Freedom of Expression on Facebook and Social Networking Sites: A UK Perspective,” HRLR 13, 125, 130 (2013).

¹⁸⁵ Delgado, note 1 above, 338; Hall N. et al., *The Routledge International Handbook on Hate Crime*, (London: Routledge 2014), 294.

Some researchers argue that the possibility to make extremist statements effectively serves as a “pressure valve” allowing their release in words rather than actions, and accordingly should be permitted.¹⁸⁶ However, the evidence in Israel’s case disproves this theory. Online incitement and calls for violence not only create a climate in which violence is considered legitimate, but are also translated into violent demonstrations that terrorize Arabs and human rights activists. These actions are led by those who stand behind the Facebook groups involved, such as members of Lehava or the “Al-Yahud” gangs.¹⁸⁷ The statements involved advocate concrete action, such as boycotts of a specific business that employs Arabs, or a demonstration in protest at a specific event. In most cases such protests involve verbal violence, and in some cases physical violence ensues.

It should be recalled that unlike spoken remarks, online comments remain accessible long after they were made, since they can be viewed by a large audience and not merely by the intended recipient of the comment.¹⁸⁸ Accordingly, they do not merely serve as a “pressure valve”, but have a tangible impact of ongoing incitement.

Incitement: The Legal Perspective

The phenomenon of online incitement raises the issue of freedom of expression and the extent to which this may be restricted with regard to inciting statements. The right to freedom of expression must be weighed against the rights to equality and dignity, which are injured by racist incitement. In the following sections we review the right to dignity and equality and the right to freedom of expression in the context of online statements. We will then discuss the question of racist incitement in Israeli law.

¹⁸⁶ McSpadden, note 165 above, 503.

¹⁸⁷ See note 178 above. We should add the IRAC has contacted the commander of the Jerusalem District Police and met with him on this matter.

¹⁸⁸ Cronan, note 172 above, 428; McGoldrick, note 185 above, 323.

The Principle of Equality and Human Dignity

The principle of equality is one of the fundamental values of our legal system – “the very soul of our entire constitutional regime” (Justice M. Landau in HCJ 69/98, *Bregman v Finance Minister*, Piskei Din 27(1) 693, 698). The right to equality is a supra-legal constitutional right protected as part of the right to dignity in the Basic Law: Human Dignity and Liberty.

The Supreme Court has established that collective discrimination, such as discrimination on the grounds of national affiliation, entails the profound humiliation of the victim of discrimination, and is hence contrary to the Basic Law:

You can have no more destructive element to society than the feeling of itssonsanddaughters thattheyaretreatedunequally. The sense of inequality is one of the harshest emotions. It damages the unifying forces of society. It damages the individual’s self-identity. HCJ 983/87, *Poraz v Mayor of Tel Aviv-Jaffa*, Piskei Din 42(2) 309, 332.

A racist statement gravely injures the dignity of the person against whom it is directed.¹⁸⁹ The racist statement violates human dignity in its most basic sense, since it negates certain aspects of the individual due to his or her racial affiliation, or denies the individual’s basic right to equality.¹⁹⁰ In CA 2831/95, *Rabbi Ido Elba v State of Israel*¹⁹¹ (hereinafter: “Elba,”) the judges reached a similar conclusion:

Racism injures human dignity and equality. Racism undermines social order, social tolerance, and public wellbeing. It contradicts

¹⁸⁹ Yuval Karniel, “Racism, Media, and Slander – Can Someone Call a Racist ‘Nazi?’” *Law* 11 409, 414 (5767).

¹⁹⁰ Mordechai Kremnitzer and Liat Levanon, “Freedom of Expression in the Rulings of Aharon Barak,” *Studies in Barak’s Judicial Thought*, 195 (Eyal Zamir, Barak Medina, and Celia Fassberg, eds. 2009) (in Hebrew).

¹⁹¹ CA 2831/95, *Rabbi Ido Elba v State of Israel*, Piskei Din 50(5) 221, 253.

the essence and foundations of the State of Israel as a Jewish and democratic state. (Justice Barak, Elba, 287)

Freedom of Expression on the Internet

The internet, unlike radio and television, creates a broad opportunity for the individual to participate in political discourse and to express his opinion directly. Until now, the individual could speak to large audiences only if the conventional media – radio or television – permitted him to make his voice heard. Today, however, the platform is open to all, and the individual may be both a listener and a speaker. Some would even suggest that this is the genius of democracy: that every individual can speak and influence his friend, and those who are not his friend.¹⁹²

Justice Michel Heshin

Although freedom of expression is not explicitly enshrined in the Basic Laws, it constitutes a “supreme right.”¹⁹³ Freedom of expression is one of the foundations of democracy and is vital to the self-realization of every individual, to the protection of the rights of minority groups, and to democracy itself.¹⁹⁴

Freedom of expression enshrines the right of individuals and groups to express their opinions freely and to raise issues they consider important for public discussion:

This liberty, which has equals but no superior, is primarily intended to enable an individual to express their personality. Expression enables any person to manifest their personal feelings and qualities, to manifest what is on their mind, and thereby to develop and nurture their personality... In

¹⁹² CEC 16/2011, *Shas v Member of Knesset Ofir Pines*, 30 January 2001.

¹⁹³ HCJ 73/53, *Kol Ha'am Ltd. v Interior Minister, Piskei Din 7(2)* 871.

¹⁹⁴ *Ibid.*; Elikim Rubinstein, “Freedom of Expression and the Prosecution Policy in Offenses of Incitement to Violence,” *Hapraklit* 44 A 5.

this sense, freedom of expression forms part of human autonomy, part of the right to self-determination and part of the capacity to manifest unique human properties; this is the right to self-realization...

Freedom of expression also enables the public presentation of different opinions. The competition between these opinions constitutes the fuel for the development of advanced opinions and ideas. The exchange of information, particularly on public matters, enables the public to formulate its positions, and thereby also facilitates more effective scrutiny of authorities... Freedom of expression thus reflects the liberty to know, to absorb information, and to receive diverse messages of thought and opinion. CA 751/10, *Anonymous v Dayan-Auerbach*.¹⁹⁵

There can be no doubt that the importance of freedom of expression is measured most forcefully when it confronts harsh and outrageous statements (recalling the comment attributed to Voltaire: "I do not agree with a word you say, but I will defend to the death your right to say it.") However, the right to freedom of expression is not unlimited. As noted, the Supreme Court has ruled that freedom of expression forms part of human dignity and is protected under the Basic Law: Human Dignity and Liberty. However, "not all the aspects of the right to freedom of expression are perceived as forming part of the constitutional right to human dignity, but rather those of its aspects that are derived from human dignity and that maintain a close affinity with 'those rights and values that form the foundation of human dignity insofar as it manifests recognition of the autonomy of private will, freedom of choice, and freedom of action of the individual as a free being'" (HCJ 2557/05, *Majority Campaign v Israel Police*, section 13 of the president's ruling). In other words, freedom of expression is protected by the Basic Law only if it is consistent with human dignity. Accordingly, it is unclear whether a racist statement is included in freedom of expression, particularly when

¹⁹⁵ CA 751/10, *Anonymous v Dayan-Auerbach*. 8 February 2012, para. 62 of the ruling of Deputy President Rivlin.

the statement constitutes incitement to racism and violence, which are criminal offenses in the State of Israel. Moreover, even if inciting comments may be included in freedom of expression, such a right is not absolute, but relative. In the contest between this right and other rights, such as the right to equality and dignity, a balance must be achieved ensuring that the right to freedom of expression retreats in the face of that of human dignity.¹⁹⁶

Professor Kremnitzer argues that in the case of a conflict between freedom of expression and a basic right, such as equality and human dignity – the rights that, as mentioned above, are injured by racist statements, freedom of expression should be permitted as long as the injury to these rights is minimal. Granting freedom of expression to racist statements allows racists to defend this position as if it were just another personal opinion, rather than one that is offensive and dangerous.¹⁹⁷ In *Elba*, which is the principal ruling concerning racist incitement, Justice Matza concluded: “I believe that the racist statement is not included among those offensive, irritating, or outrageous forms of expression to whose existence a free society must reconcile itself, despite its revulsion. The racist expression is an exception. It lies beyond the pale of the democratic worldview, and the gates of freedom of expression are locked to it.”¹⁹⁸

The internet raises the question of the interpretation of freedom of expression in full force. It facilitates freedom of expression in the broadest and fullest possible sense. It is accessible and available to all, and accordingly it embodies the essence of freedom of expression, both in terms of the ability to receive information and in terms of the ability to express opinions and engage freely in political debate.¹⁹⁹ However, the same qualities that

¹⁹⁶ *Elba*, note 192 above, 288.

¹⁹⁷ Kremnitzer, note 191 above, 198-9.

¹⁹⁸ *Elba*, note 192 above, 267-8.

¹⁹⁹ Roi Goldschmidt, *Information in Preparation for the Debate on the Subject of ‘Online Bullying and the Use of the Application Secret,’* 1 (Knesset, Research and Information Center, 2014) (in Hebrew).

maximize freedom of expression (accessibility, a wide audience, and the absence of supervisory mechanisms) also permit the presentation of extreme and violent statements whose inclusion within the framework of legitimate freedom of expression must be questioned. They facilitate the empowerment of phenomena of online violence, bullying, and incitement which damage the freedom of expression of minority groups, perpetuate prejudice and stereotypes against minorities, encourage inegalitarian and discriminatory practices, and even promote tangible attacks on these groups.²⁰⁰ It should be recalled that in the case of incitement to violence and racism, these phenomena have already been determined to be unlawful, notwithstanding the resulting impairment of freedom of expression. Inciting statements on the internet do not merely contribute to creating a violent atmosphere and fostering suspicion and hatred between Jews and Arabs in Israel. They also clearly violate the legal provisions prohibiting incitement to racism and violence, and in some cases they actually solicit others to commit offenses against the Equal Opportunities at Work Law and the Prohibition of Discrimination in Products and Services Law.

Those who advocate complete freedom of expression and the absence of any restrictions online argue that imposing sanctions on statements, even when these express extremist opinions, is liable to have a chilling and oppressive effect.²⁰¹ An additional argument against restricting online freedom of expression is that online violence receives excessive public and media attention – a phenomenon that merely reflects the moral panic at new forms of communication, similar to the reactions seen in the past

²⁰⁰ Ibid., 3; Negbi, note 168 above, 527, 537; some commentators have argued that the internet has changed the threshold for determining what constitutes offensive content, and that since the internet can tolerate highly offensive content, this should change the criteria by which we gauge what constitutes an offensive statement – see McGoldrick, note 185 above, 138.

²⁰¹ McSpadden, note 165 above, 502; Dafna Barak Erez and Dudi Zacharia, "Incitement to Terror and the Limits of Freedom of Expression: Direct and Indirect Restrictions," *Iyunei Mishpat* 35 555, 579 (5773).

towards television.²⁰² A further argument against restricting online freedom of expression is that it enables the monitoring of groups that engage in incitement; restricting the online activities of these groups could result in activities that pass “under the radar” and cannot easily be identified.²⁰³ There is some truth in this argument, but even before the internet emerged, groups that engaged in incitement were already monitored. Accordingly, it is clear that tools exist for this purpose, even if incitement does not take place online. Moreover, many of the online associations in this field take place anonymously in private domains (such as Whatsapp groups) that are not open to all.²⁰⁴

In response to the approach that seeks to prevent any restrictions on freedom of expression, a different approach argues that, in certain circumstances, imposing such restrictions may actually strengthen this freedom. This is particularly true when the enjoyment of freedom of expression by one group silences another.²⁰⁵ Such silencing occurs, for example, when a hostile atmosphere is fostered toward the group, as in the case of online incitement against Arabs in Israel. This silencing extends both to the online domain and to other domains, as recurrent attacks have a terrorizing and threatening impact. In these circumstances, when freedom of expression is used to oppress a weaker group, the injury to freedom of expression of the offending group is essential in order to protect the freedom of expression of the injured group, and is imposed on the basis of the values of dignity and equality. This is particularly true when the statements earmarked for restriction are not intended to foster democracy, but seek to degrade, injure, and humiliate – that is to say: to incite.²⁰⁶

²⁰² Goldschmidt, note 200 above, 3.

²⁰³ Delgado, note 1 above, 340.

²⁰⁴ *Ibid.*

²⁰⁵ Negbi, note 168 above, 537.

²⁰⁶ *Ibid.*, 537-9; for further discussion of this approach, see: Owen M. Fiss, *The Irony of Free Speech* (Cambridge: Harvard 1996); Arthur Fish, “Hate Promotion and Freedom of Expression: Truth and Consequences,” (1989) 2 *Can. J. Law & Jur.* 111, 131; R. Langton.

Opening Criminal Proceedings on Account of Incitement

Freedom of expression on the internet is subject to the general legal prohibitions applying to any form of expression in Israel, including the criminal prohibitions against incitement. Israeli criminal law distinguishes between statements that enjoy the protection of freedom of speech and statements considered to constitute criminal incitement. Accordingly, Israeli criminal law attempts to strike a proper balance and to prohibit racist statements while minimizing the restriction of freedom of expression. The penal code itemizes six offenses of incitement: incitement to evasion of military service; incitement to disobedience; publishing incitement to racism; incitement to violence or terror; incitement to hatred toward a friendly country; and incitement to withhold compulsory payments.²⁰⁷ We will focus on incitement to racism and incitement to violence – the offenses relevant to the statements discussed in this report.

A unique aspect of incitement offenses is that the authority to file an indictment rests with the attorney general, who effectively plays a balancing role in enforcing offenses that restrict freedom of expression.²⁰⁸ In “regular” offenses, various officials in the State Attorney’s Office and the police are empowered to file an indictment, but in those relating to freedom of expression, this authority is limited solely to the attorney general.²⁰⁹ The attorney general was given the exclusive authority to file an indictment in order to limit the number of indictments and to ensure that the tool of the investigation and prosecution of offenses of expression would not be overused and lead to spurious criminal proceedings that would discourage free speech. The decision to instigate a criminal investigation is also taken by the attorney general or with his consent. The actual processing of offenses

“Speech Acts and Unspeakable Acts,” (1993) 22 *Phil. & Publ. Affairs* 64; C. A Mackinnon, *Only Words* (Cambridge: Harvard 1993)

²⁰⁷ Sections 109, 110, 144B, 114D2, 166, and 289 of the Penal Code, 5737-1977, respectively.

²⁰⁸ Barak-Erez, note 202 above, 563.

²⁰⁹ Section 144E of the Penal Code, 5737-1977.

of incitement is handled by a senior attorney in the State Attorney's Office in accordance with the state attorney's guidelines concerning "the opening of an investigation in matters of high public sensitivity."²¹⁰

In practice, the authorities have very rarely prosecuted incitement offenses, particularly when an incident involves solely an inciting statement, without an additional offence. An exception to this rule was seen immediately after the assassination of Prime Minister Yitzhak Rabin, when the State Attorney's Office filed a series of indictments for offenses of incitement against individuals accused of legitimizing or praising the assassination.²¹¹ The attorney general interprets the law in a manner that effectively includes most racist statements under the protection of freedom of expression, and defines criminal racist statements not included under freedom of expression in a highly constrained manner. A recent example of this occurred in an affidavit submitted by the State in response to a Supreme Court petition concerning the book "The King's Torah," which discusses religious laws concerning the killing of non-Jews and argues that Gentiles, including babies and children, may be killed in order to prevent them later becoming terrorists. The State declared that "the longstanding policy of the attorney generals and state attorneys in all periods has been to apply the criminalization of offenses touching on freedom of expression in a limited and measured manner."²¹² In our opinion, this interpretation is excessively restricted; it virtually denudes

²¹⁰ Guideline no. 14.12 – Opening an Investigation in a Matter of High Public Sensitivity: <http://index.justice.gov.il/Units/Advocacy/Hanchayot/1412.pdf> (in Hebrew); we should note that this concentration of authority, combined with the concentration of authority in the hands of the attorney general, creates a bottleneck. While it ensures professionalism, it creates a considerable burden on the system. See: Einat Hurvitz, Liora Bechor, and Alona Lisitsa, 'Love the Stranger as Yourself: Racism in the Name of Halacha' (Israel Religious Action Center, the Israel Movement for Progressive Judaism, 2011): <http://www.irac.org/userfiles/racism-report.pdf>

²¹¹ Barak-Erez, note 202 above, 502; Eyal Benvenisti, "The Regulation of Freedom of Expression in a Polarized Society," *Mishpatim* 30 29 (5759).

²¹² NCJ 2684,2688/12, *Israel Campaign against Racism v Attorney General et al.*, p. 14 of the affidavit of response submitted by the respondents on 26 May 2014.

the criminal prohibition of any content and effectively permits unbridled racist incitement without any response on the part of the legal authorities.

Racist Incitement

The offense of incitement to racism is established in section 144(B) of the Penal Code, 5737-1977 and was enacted in 1986 in response to the growing wave of racism in Israel, and in particular the campaign by Meir Kahane to propagate his ideas.²¹³ The sense was that it was important to address the issue in legislation for the first time.²¹⁴ The purpose of the legislation was “to protect the State of Israel from the grave dangers inherent in antidemocratic and racist ideological attitudes and to maintain the Jewish and democratic character of the State.”²¹⁵

Israeli law defines racism as “persecution, humiliation, degradation, manifestation of hatred, hostility, or violence, or fomenting hostility toward a public or sections of the population due merely to color or racial affiliation or ethno-national origin.”²¹⁶ The offense of incitement to racism prohibits a publication with the goal of inciting to racism, and is an offense regardless of whether the publication actually led to a demonstrable increase or act of racism.²¹⁷ The original bill did not include the requirement of the goal of inciting to racism; this was presumably added in order to permit a statement or conduct in certain instances without this being considered incitement

²¹³ Eli Saltzberger and Fania Oz-Saltzberger, “The Tradition of Freedom of in Israel,” in: Michael Birnhack (ed.) (2006), *Quiet, People are Talking! The Legal Culture of Freedom of Expression in Israel*, 30 (in Hebrew).

²¹⁴ Explanatory Notes to the Penal Code (Amendment No. 24), 5745-1985, Government Bills 1728 193, 195.

²¹⁵ Elba, footnote 192 above, 252.

²¹⁶ Section 144A of the Penal Code, 5737-1977.

²¹⁷ Section 144B of the Penal Code, 5737-1977: “(a) If a person publishes anything in order to incite to racism, then he is liable to five years imprisonment. (b) For the purposes of this section, it does not matter whether the publication did cause racism, and whether or not it is true;” section 34X of the Penal Code, 5737 defines a “publication” as: “– written matter, printed matter, computer material or any other visual presentation and any audio means capable of presenting words or ideas, whether alone or with the help of any medium.”

to racism, such as prayer.²¹⁸ The law includes two defenses – the first if the publication is “a correct and fair account of an action, provided that this was not undertaken with the goal of causing racism;” the second relates to “a quote from scriptures and prayer books, or the observance of a religious ritual... provided that this was not undertaken with the goal of inciting to racism.”²¹⁹

Case law has established that the offense is present if the person making the inciting publication intends that the public will adopt the positions manifested therein. However, there is no need to prove that the publication actually led to racist actions against the public that was the object of the incitement. We should stress that the law emphasizes the prohibition of the racist statement itself, based on the rationale that turning hearts and minds against a particular group, as undertaken by online inciters, is a dangerous and destructive act in its own right, separately from the question as to the probability that this will lead to racist action.

The question as to whether a specific statement will be considered as incitement or not is an interpretative one that examines the statement in question against the background of the legislative provisions and case law, balancing the injury to freedom of expression and the values that are undermined by the statement itself.²²⁰ This is not a mechanical formula, but involves the detailed examination of each statement and a determination as to whether it constitutes incitement.²²¹

²¹⁸ Yitzhak Kugler, *Intention and the Expectations Rule in Penal Codes*, (1997), 328, 330 (in Hebrew).

²¹⁹ Section 144C of the Penal Code, 5737-1977.

²²⁰ Rubinstein, note 195 above, 8.

²²¹ Thus, for example, Justice Barak nullified a decision by the Israel Broadcasting Authority not to broadcast features and reports about Kahane and the Kach movement, with the exception of reports that were overtly newsworthy. In his ruling, Barak established that even racist statements should be broadcast, provided that there is not virtual certainty that they will damage public order. Although Justice Bach concurred with Justice Barak's opinion, he presented a divergent opinion arguing that he would be willing to permit the

The guiding ruling concerning incitement to racism is the ruling in the case of Rabbi Ido Elba.²²² In April 1994, Rabbi Elba, the rabbi of a kollel (religious studies institute for married men) alongside the Cave of the Patriarch in Hebron published an article entitled “A Clarification of the Religious Laws concerning the Killing of a Gentile.” The article that formed the subject of the ruling included quotes from Jewish sources, together with an analysis forming a conclusion regarding the legitimacy of killing a Gentile. Elba was prosecuted at the Jerusalem District Court and convicted of several offenses, including the publication of incitement to racism, the attempted manufacture of a firearm, and the attempted possession of a firearm. Elba was convicted and subsequently appealed to the Supreme Court, which rejected the appeal in a majority ruling of five justices against two. The justices disagreed among themselves regarding the interpretation of the offense.²²³ The minority justices – Justices Tirkel and Tal – established that Elba’s statements did not amount to racist incitement since they constituted scripture.²²⁴ The majority justices determined that “the State of Israel, as a decent State founded on Jewish and general moral values, cannot and is not permitted, for the sake of its wellbeing and its future, to act leniently regarding ugly phenomena of incitement to racism.” (Justice Matza, Elba, 285). The justices rejected Elba’s appeal against his conviction and against his sentence.

Incitement to Violence

Until 2002, the prohibition against incitement to violence formed part of the Prevention of Terrorism Ordinance. In 2000, the Supreme Court

disqualification for broadcast of content liable with virtual certainty to offend. HCJ 399/85, *MK Meir Kahane v Board of Directors of the Israel Broadcasting Authority* 328, 330 (1997).

²²² Elba, note 192 above.

²²³ For a detailed analysis of the ruling in Elba and the applicability of the expectation rule, see: Mordechai Kremnitzer, “The Elba Case: A Clarification of the Rules of Racist Incitement,” *Mishpatim* 30 105 (5759).

²²⁴ Elba, note 192 above; Saltzberger, note 214 above, 58.

acquitted the journalist Muhammad Jabarin of “publishing praise and encouragement for acts of violence” concerning an article he wrote about the intifada. The Supreme Court’s restrictive interpretation of the ordinance enabled Jabareen’s acquittal.²²⁵ Following the ruling in the Jabarin case, the Knesset nullified the section in the Prevention of Terrorism Ordinance that concerns incitement to racism and terror, and in 2002 it enacted the offense of incitement to violence or terror in the penal code.

The offense established in section 144D2 of the penal code defines an act of violence or terror as an offense that “causes a person bodily injury or places a person in danger of death or of severe injury.”²²⁶ The law prohibits the publication of a call to violence or terror, or the publication of praise, words of approval, encouragement, support or identification with such an act. In contrast to the offense of incitement to racism where as noted there is no requirement that the publication actually cause racism, in this offense it is required that the content and circumstances of the publication create a real possibility that it will result in acts of violence or terror.²²⁷

On the question of “real possibility,” the Supreme Court has chosen not to establish predefined rules, and has ruled that the full circumstances surrounding each case must be examined. Among other things, this examination will include the identity of the person making the publication, the prevailing public opinion, the scope and audience of the publication, and so forth.²²⁸ The court attaches great importance to the broader context in which the statements were made.

²²⁵ Add.Crim.Hear. 8613/96, *Jabarin v State of Israel*, *Piskei Din* 54(5) 193.

²²⁶ Section 144D(2)B of the Penal Code, 5737-1977.

²²⁷ Section 144D(2)A of the Penal Code, 5737-1977.

²²⁸ Ben Hurin, note 183 above, para. 7.

Filing Indictments and Instigating Investigations on Account of Incitement to Racism and Violence

For many years the law enforcement system maintained a deafening silence in the face of the phenomena of incitement to racism and incitement to violence. The authorities refrained from filing indictments, particularly when the incitement was made by public or rabbinical figures.²²⁹ In recent months it has been noticeable that the attorney general, who, as noted, has tended to avoid exercising his authority to instigate investigations into cases involving incitement, has begun to change his approach in light of the growing wave of online incitement. Several investigations have been opened in this field, and some have led to indictments:

- Three persons were arrested and investigated on suspicion of running a campaign of racist attacks and calls for violence against Arabs on Facebook following the murder of the three youths in June 2014;²³⁰
- Indictments were filed against the manager of the “Al-Yahud Gang” Facebook page;²³¹
- An indictment was filed against the founder of the Facebook page “A real Arab is a dead Arab;”²³²

²²⁹ Hurvitz, note 211 above.

²³⁰ Shimon Ifergan, “Police Arrests Three on Suspicion of Involvement in Facebook Incitement Campaign,” 6 July 2014: <http://www.mako.co.il/nexter-internet/social-networks-facebook/Article-c4cd9b6748c0741006.htm> (in Hebrew); Yonatan Urich, “Three Suspected of Facebook Incitement Detained for Investigation,” *nrg*, 6 July 2014: <http://www.nrg.co.il/online/1/ART2/593/304.html>; Yishai Karov, “Criminal Investigation against Online Inciters,” *Arutz Sheva* 2 July 2014: <http://www.inn.co.il/News/News.aspx/279281>

²³¹ Shirley Seidler, “Indictment of Founder of ‘Al-Yahud Gang’ Facebook Page for Incitement to Violence,” *Ha’aretz* 5 August 2014: <http://www.haaretz.co.il/news/law/1.2397811> (in Hebrew); “Indictment of Manager of ‘Al-Yahud Gang’ on Facebook,” *Walla!* 5 August 2014: <http://tech.walla.co.il/item/2772738>

²³² Shirley Seidler, “Indictment of Man for Incitement to Anti-Arab Violence on Facebook,” *Ha’aretz* 28 August 2014: <http://www.haaretz.co.il/captain/net/1.2419035> (in Hebrew).

- An indictment was filed against four people for conspiring to commit a racially-motivated crime and for assault after they managed a Whatsapp group and Facebook page advocating attacks on Arabs under the name "Jews against Assimilation;"²³³
- An indictment was filed on account of incitement to violence and incitement to racism against the editors of the website "The Jewish Voice" regarding content that appeared on the site and in a Google group under their management;²³⁴
- An investigation was opened against the Lehava organization and its head, Bentzi Gopstein.²³⁵

However, many serious statements remain without any response on the part of the law enforcement agencies; accordingly, the above examples do not appear to reflect a systemic change of approach or part of a long-term plan to combat racism. It is obvious that without such a plan, these legal steps will remain purely localized actions that cannot help eradicate racism in a comprehensive manner.

²³³ Yossi Silberman, "Indictment: Organized on Whatsapp and Attacked an Arab Man," *Channel Two News* 20 May 2014: <http://www.mako.co.il/news-law/legal/Article-53396c5bef91641004.htm>

²³⁴ Itzik Woolf, "Indictment for Incitement Filed against Operators of The Jewish Voice," *News 1 First Class* 2 February 2014: <http://www.news1.co.il/Archive/001-D-343820-00.html>; Yehoshua Breiner, "Editors of Rightist Website Accused of Incitement to Violence against Arabs," *Walla!* 2 February 2014: <http://news.walla.co.il/item/2717345>; indictment at the Magistrate's Court in Petach Tikva against Avraham Ben Gideon Binyamin and Yehoshua Ben Mordechai Hess: <http://www.haaretz.co.il/st/inter/Hheb/images/hakol1.pdf> (in Hebrew).

²³⁵ Ofer Hadad and Moshe Nussbaum: "Lehava Head Bentzi Gopstein Arrested," *Channel Two News* 6 December 2014: http://www.mako.co.il/news-law/crime-q4_2014/Article-1bcb4d9e6415a41004.htm; Nir Hasson, "In Response to Wave of Arrests: Lehava Halts Public Activities," *Ha'aretz* 26 December 2014: <http://www.haaretz.co.il/news/law/1.2513290> (in Hebrew).

Demands for “Jewish Labor” and the Non-Employment of Arabs

As the factual section of this report revealed, a significant proportion of online racist statements take the form of demands for “Jewish labor” and seek to discourage the employment of Arabs. In our opinion, such statements also constitute racism, since they provoke hostility and manifest hatred toward the Arab public. However, the attorney general does not seem to interpret such statements as incitement to racism. IRAC has contacted the attorney general several times concerning demands for “Jewish labor” and calls to refrain from employing Arabs, but has not received any response.

In the case of declarations by businesses themselves stating that they do not employ Arabs, these statements violate the terms of the Equal Opportunities in Work Law, 5748-1988.²³⁶ Section 2(A) of this law establishes that an employer must not discriminate between employees or between jobseekers on the grounds of their race, religion, or nationality (among other criteria). This law further prohibits the publication of an advertisement that includes such discrimination, while section 15(A) establishes that a violation of the prohibition against discrimination constitutes a criminal offense incurring penal sanctions.

When it concerns a third party, other than the business itself, calling for the non-employment of Arabs, this does not directly violate the Equal Opportunities in Employment Law. However, the operators of Facebook pages and websites that publish such calls enable or encourage this offense, facilitate it, and foster the conditions in which this offense is being committed. It may be argued that such web pages entice employers to commit an offense in violation of the Equal Opportunities at Work Law,²³⁷

²³⁶ We should note that this law applies only to businesses employing more than six workers.

²³⁷ Section 30 of the Penal Code, 5737-1977 establishes that “If a person causes another to commit an offense by means of persuasion, encouragement, demand, cajolery or by means of anything else that constitutes the application of pressure, then he entices to an offense.”

and that they assist employers to commit a crime, in publishing adverts that are prohibited in accordance with this law.²³⁸

Businesses that declare that they do not provide a service for Arabs violate the Prohibition of Discrimination in Products, Services, and Places of Entertainment and Public Places Law, 5761-2000, which prohibits any body providing a public service to discriminate on the grounds of race or origin, among other criteria, or to publish an advertisement that includes such discrimination. The violation of the law creates both a civil tort and a criminal offense.

In addition to Facebook pages demanding “Jewish labor” and the non-employment of Arabs, a website called “Jewish Work”²³⁹ advertises businesses, vacant jobs, and jobseekers. However, the service is confined solely to Jewish-owned businesses employing Jews only, and for Jewish jobseekers only. The aim of this website is to persuade the general public to refrain from employing non-Jewish workers in general, and Arab workers in particular. As a result, a non-Jewish person who wishes to advertise their services on the website (whether as an employer or a jobseeker) is not permitted to do so. As noted, Jewish employers who employ non-Jews, or who employ non-Jews alongside Jewish workers, are also prevented from advertising on the site. In addition to the racist character of the site, an advertising board is a public service. In this case, this service is provided in a manner that discriminates on the grounds of race, religion, and/or

²³⁸ Section 8(A) of the Equal Opportunities Law, 5748-1988 establishes that “an employer or a person requiring a worker shall not publish an advertisement concerning a job offer or referral to vocational training unless the job offer was stated in the masculine and in the feminine, whether in the singular or the plural, and further shall not publish such an advertisement that constitutes discrimination in accordance with the provisions of section 2;” section 31 of the Penal Code establishes that “if a person does anything – before an offense is committed or during its commission – to make its commission possible, to support or protect it, or to prevent the perpetrator from being taken or the offense or its loot from being discovered, or if he contributes in any other way to the creation of conditions for the commission of the offense, then he is an accessory.”

²³⁹ <http://www.avoda-ivrit.org>

nationality, and accordingly the website is in violation of the Prohibition of Discrimination in Services and Products and Entry to Places of Entertainment and Public Places Law, 5761-2000.²⁴⁰ This discrimination is overt and reflects the website's declared position. In October 2014, IRAC and the Mossawa Advocacy Center for Arab Citizens in Israel filed a suit against the website on the grounds of discrimination in the provision of a public service. The suit, for the sum of NIS 50,000, is still pending at Jerusalem Magistrate's Court.²⁴¹

We should note that a similar website promoting Jewish labor was active in the past at the web address www.jewsit.org/avodaivrit. In 2004, IRAC and the Mossawa Advocacy Center for Arab Citizens in Israel also filed a suit at the Jerusalem Magistrate's Court against the operators of this site in accordance with the Prohibition of Discrimination Law. After the suit was filed the parties reached a compromise that received the status of a court ruling. According to the compromise, the website was taken offline and an apology was published. Anyone who typed the name of the website saw the following text: "The managers and operators of the 'Jewish Labor' website apologize for any offense caused to feelings or to human dignity, or for any damage caused, if at all, to any person or public by publications on the site."²⁴²

Enforcement

Even if indictments are filed or investigations opened on the grounds of incitement to racism and violence, without effective enforcement these will not have a deterrent effect and the phenomenon of online incitement to racism and violence will continue to exist beneath the radar of the law enforcement system. A further problem in this context is the limited scope

²⁴⁰ Section 3A of the Prohibition of Discrimination in Services and Products and Entry to Places of Entertainment and Public Places Law, 5761-2000.

²⁴¹ CA 9532-10-14, *Israel Religious Action Center v Erez Lieberman*.

²⁴² From the compromise settlement in CA 7019/04, *Israel Religious Action Center v Adi Ginsburg et al.*

of enforcement on the internet due to its international character (an aspect we will discuss in the section Jurisdictional Authorities), technological developments, the need for skilled personnel with expertise in searching computer systems, and in particular the possibility of anonymity.²⁴³

While anonymity has many advantages, including in social terms (facilitating equality and freedom of action),²⁴⁴ it also allows those who wish to commit criminal offenses such as incitement to do so without revealing their identity. In order to ascertain against whom action needs to be taken, the offender's identity must be established. Some online statements are made anonymously without disclosing the author's identity. It is impossible to instigate legal proceedings on the grounds of incitement unless the source has a known identity and location.²⁴⁵ Revealing the identity of an online user entails extensive technical and legal difficulties; it also raises value-based dilemmas concerning users' right to online anonymity and damage to the integral character of the online domain.²⁴⁶ In many cases it is not possible to identify a specific source of inciting comments, and accordingly it is impossible to impose liability for information published and transmitted online.²⁴⁷ Naturally, the more sophisticated an internet user is, and the greater their technological knowledge, the more they are able to ensure that it will be virtually impossible to locate them. By contrast, the identity of less technologically savvy people can easily be exposed.²⁴⁸

²⁴³ Hollander, note 166 above, 13; Michal Agmon-Gonnen, "The Internet as a City of Refuge?! Legal Arrangements in Light of the Possibilities for Technological and Global Bypasses on the Internet," in: Niva Elkin-Koren and Michael Birnhack, *A Legal Net: Law and Information Technology*, 207-9 (2011) (in Hebrew).

²⁴⁴ Michael Birnhack, *Private Domain: The Right to Privacy between Law and Technology*, 298 (2010) (in Hebrew).

²⁴⁵ Hollander, note 166 above, 12; Agmon-Gonnen, note 244 above, 211.

²⁴⁶ Negbi, note 168 above, 528.

²⁴⁷ Hollander, note 166 above, 6.

²⁴⁸ Agmon-Gonnen, footnote 244 above, 211.

In order to identify the source of an inciting message, even if it is anonymous, cooperation with some or all of the following third parties is required: the internet service provider (ISP), the internet platform (such as Facebook or Google), and the physical location where the message was written, in the case of a location with multiple computers (such as a library, internet café, or university). The identifiable element is the Internet Protocol (IP) address that is attached to any online message.. The internet service provider knows this address, but it does not necessarily save this information, or if it does, this may only be for a very short period. The IP address may refer to a location with a large number of computers, such as a university or an internet café, and it will then be impossible to know which computer was used to commit the offense. In addition, software programs may enable users to camouflage their IP address.²⁴⁹ Moreover, the ability of internet service providers to transfer information to a third party may be restricted in accordance with the contract between the provider and the users.²⁵⁰

Israeli legislation does not explicitly delineate the liability of **internet service providers** for content published by their means.²⁵¹ Transforming internet service providers into an enforcement body is liable to expose them to legal claims from users, thereby creating a chilling curtailment of online freedom of expression and freedom of access to information.²⁵² In order to prevent such suits, some internet platforms operate some type of filtering system, whether in advance or retroactively following complaints about specific content, with the goal of preventing the publication of content that they

²⁴⁹ Ibid.; Birnhack, note 245 above, 388.

²⁵⁰ Hollander, note 166 above, 13.

²⁵¹ In the ruling in App.Adm.Pet. 3782/12, *Commander of Tel Aviv District Police v Israel Internet Association*, Justice Fogelman discussed the liability of internet service providers regarding the blocking of access to gambling websites. Fogelman established that, in the absence of any explicit authorization in law, it is impossible to oblige a private body such as an internet service provider to undertake actions for a third party, including enforcement actions such as closing websites.

²⁵² Hollander, note 166 above, 9.

fear is liable to lead to lawsuits.²⁵³ A further possible outcome of imposing liability on internet service providers is that the costs of filing lawsuits could significantly increase the companies' expenses, reducing the number of providers in the market and leading to an increase in the cost of their services.²⁵⁴

Regarding the exposure of anonymous internet users with the assistance of the courts, the Supreme Court ruling in the Rami Mor case, from March 2010, effectively prevents this possibility.²⁵⁵ Mor was an alternative therapist who treated skin diseases. A talkback on a website devoted to health issues featured fierce criticism of Mor, including the allegation that he was a "charlatan." Mor secured the IP address from which the comment was made and asked the court to instruct the internet service provider to reveal the identity of those involved. The case reached the Supreme Court, which established that the identity of the anonymous writer who vilified Mor was not to be exposed. The court ruled that the right to anonymity derives from the right to freedom of expression and the right to privacy, which are of particular importance in the context of the internet. The Court refused to intervene and noted:

"The requested relief in our case is exceptional. It constitutes an attempt, before a trial has been held, to engage the legal system and the third party in order to pursue an investigation leading to the exposure of the identity of a person committing a tort against whom a civil claim may be filed. This effectively constitutes a quasi-investigative process to which the Court is recruited in a preliminary proceeding of some format. This proceeding is no trivial matter, but involves complex policy considerations and requires legislative arrangement." (Mor, 716)

²⁵³ Negbi, footnote 168 above, 530; Elkin-Koren, footnote 179 above, 391-2.

²⁵⁴ Negbi, footnote 168 above, 530; Elkin-Koren, footnote 179 above, 393.

²⁵⁵ Perm.Civ.App. 4447/07, *Rami Mor v Barak I.T.C.* [1995] *International Telecommunications Company Ltd., Piskei Din* 63(3) 664.

The court found that there is no procedural framework that enables an instruction to be given to expose anonymous internet users; in the absence of suitable legislative provisions, the court is not empowered to create a framework permitting the filing of a suit without a specifically-identified defendant.²⁵⁶ Regarding online offenses, Justice Rivlin noted that it is possible to file a complaint, and that the law enforcement authorities can be expected to exercise their investigatory powers in accordance with the law. As noted, however, this function rests with them, and not with the courts.²⁵⁷ The court urged the legislature to amend the law.²⁵⁸

In 2008, the government published a bill on the subject: The Proposed Law: Electronic Commerce, 5668-2008 (PL 356). Section 13 of the bill established that an internet service provider will not reveal any details which are capable of identifying the source of the information unless the source of the information has expressly consented thereto, or unless required to do so in accordance with a court order.

It was also established that the court is entitled, in response to a request, to order an internet service supplier to provide identifying details of the source of the information, if the court believes that there is real concern that the information uploaded to the web constitutes an offense against or a violation of a person's intellectual property. The Ministry of Justice published a similar legislative memorandum in 2011 (Exposure of Details of a User on an Electronic Communications Network, 5771-2011) following the Mor ruling, but this did not evolve into legislation.

As for the *internet platforms* – when the need arises to obtain information, a formal procedure known as a “legal assistance request” must be submitted to the authorities in the country of origin. If a suitable judicial order is delivered to the company, it is usually possible to obtain information held

²⁵⁶ Birnhack, note 245 above, 352-3.

²⁵⁷ Mor, note 256 above, 36.

²⁵⁸ Birnhack, note 245 above, 352-3.

in their servers. In order to receive information from foreign countries, it is important for the Israeli enforcement bodies to strengthen their international cooperation.²⁵⁹ Informal channels of cooperation have been developed with some companies, such as Google and Facebook, in order to facilitate the receipt of information. By contrast, the level of cooperation with other companies, such as Secret, is limited, and accordingly even when there is concern that these platforms are being used to commit offenses of incitement to violence, an official request must be submitted to the authorities of the relevant country.²⁶⁰

In most cases, internet platforms have adopted ambiguous policies concerning freedom of expression. Facebook, for example, does not usually engage in proactive self-scrutiny. However, Facebook users can submit complaints and these are then examined. Facebook may block pages that contravene its rules, but the principles that guide its decision as to what constitutes a violation are unclear. The company maintains what seems to be a deliberately vague approach on this matter.²⁶¹ It should also be recalled that the people who examine inciting content are not necessarily employees of Facebook Israel, but international teams that may not speak Hebrew or have a thorough understanding of Israeli culture. Accordingly, some of the content and the incitement it embodies will surely go unnoticed.²⁶²

Over recent months, a relatively large number of racist Facebook pages have been closed. The problem is that due to the dynamic nature of the internet,

²⁵⁹ Minutes of Meeting No. 43 of the Knesset Science and Technology Committee, 19th Knesset (12 May 2014): <https://knesset.gov.il/protocols/data/rtf/mada/2014-05-12.rtf>

²⁶⁰ Goldschmidt, note 200 above, 5.

²⁶¹ In January 2015, for example, Facebook decided to remove the "Tweeting Statuses" page, which broke Facebook's rules by selling statuses: Nati Tocker, "Permanently Removed: Facebook Decides to Remove the Tweeting Statuses Page," *TheMarker* 21 January 2015: <http://www.themarker.com/advertising/1.2545559> (in Hebrew); Oded Yaron, "Facebook Finally Removes Tweeting Statuses; Avi Lan in Response: A Brutal Decision," *Ha'aretz*, 21 January 2015: <http://www.haaretz.co.il/captain/net/1.2545619> (in Hebrew).

²⁶² Racheli Rotner, "Post-Viral: Why Doesn't Facebook Israel Stop the Incitement?" *Walla!* 23 July 2014: <http://tech.walla.co.il/item/2768397>; Heins, note 4 above, 326.

many of the closed pages have quickly re-emerged with a new name, and some of them continue to operate as of the time of writing. Facebook pages that have been removed included those of Baruch Marzel;²⁶³ Michael Ben-Ari;²⁶⁴ the Lehava organization (which has been closed and reopened dozens of times);²⁶⁵ “Jewish Labor – That Your Brother Might Live with You;”²⁶⁶ and “Left-wingers who irritate me.”²⁶⁷ Unlike Facebook, Twitter does not impose any restriction on content, including controversial content.²⁶⁸

Israel Police Cyber Unit

The National Cyber Unit, which forms part of the “Lahav 433” section of the Israel Police, is responsible for responding to online incitement in Israel. The unit was established in 2012 in order to address the phenomenon of cybercrime.²⁶⁹ The unit processes investigation files relating to online incitement in accordance with the decision of the chief commissioner and the head of the Intelligence Investigations Division. It should be recalled that the authority to open an investigation into incitement to racism or violence does not rest with the police, but with the attorney general. Accordingly, the unit’s work is subject to the attorney general’s guidelines, which effectively dictate the pace and the ability of the police to respond to such offenses.

²⁶³ Oded Yaron, “Baruch Marzel’s Page Removed from Facebook due to Incitement,” *Ha’aretz* 21 July 2014: <http://www.haaretz.co.il/captain/net/1.2383238> (in Hebrew).

²⁶⁴ Hanan Greenwood, “Facebook Pages of Michael Ben Ari and the Lehava Organization Removed following Complaints of Incitement,” *Kippa* 22 July 2014: <http://www.kipa.co.il/now/57942.html>

²⁶⁵ *Ibid.*

²⁶⁶ “‘Jewish Labor’ Facebook Page Removed from Web,” *The Jewish Voice* 25 November 2014: <http://www.hakolhayehudi.co.il/news/%D7%93%D7%A3-%D7%A4%D7%99%D7%99%D7%A1%D7%91%D7%95%D7%A7-%D7%A2%D7%91%D7%95%D7%93%D7%94-%D7%A2%D7%91%D7%A8%D7%99%D7%AA-%D7%94%D7%95%D7%A1%D7%A8-%D7%9E%D7%94%D7%A8%D7%A9%D7%AA-1080>

²⁶⁷ Racheli Rotner, “Trapped in the Web,” *Walla!*, 8 July 2014: <http://tech.walla.co.il/item/2762107>

²⁶⁸ McGoldrick, note 185 above, 128.

²⁶⁹ For an explanation about the Cyber Unit (in Hebrew), see the Israel Police website (in Hebrew): <http://www.police.gov.il/contentPage.aspx?pid=308&mid=9>

Ministry of Justice Hotline

At the peak of the wave of incitement that flooded Israel in the summer of 2014, the (then) Justice Minister Zippi Livni announced the establishment of a telephone hotline for complaints about online incitement. The hotline was instructed to forward complaints to the relevant authorities.²⁷⁰ According to the Ministry of Justice, the hotline has received hundreds of complaints that were forwarded to the State Attorney's Office. The hotline continues to operate.

Civil Initiatives

In the absence of adequate governmental action to combat online incitement, local civil initiatives emerged in an attempt to combat the phenomenon, using means available to any internet user. Towards the end of the summer of 2014, for example, representatives of numerous youth movements began to establish online "patrols" to locate racist activity and to act to ensure its removal from the web. Members of the patrols underwent training to help them monitor online racist statements and to work towards their removal.²⁷¹

Despite the efforts by the Cyber Unit of the Israel Police and the Ministry of Justice Hotline to enhance online enforcement, the official response still seems insufficient to halt the surge of online racism. In the absence of online supervision and enforcement – whether by internet users themselves, in the form of social enforcement (e.g. through social initiatives or the verbal condemnation of incitement), or by the law enforcement system – no-one

²⁷⁰ Opening of a Hotline for Public Complaints about Incitement – website of the Ministry of Justice: <http://www.police.gov.il/contentPage.aspx?pid=308&mid=9> (in Hebrew); "Justice Ministry Launches Hotline for Complaints about Online Incitement," *Ha'aretz* 7 July 2014: <http://www.haaretz.co.il/news/law/1.2369507> (in Hebrew)

²⁷¹ Omri Goren, "Youth Movements Launch 'Trapping Racism on the Web' Project," *Frogi* 20 August 2014: <http://www.frogi.co.il/news-magazine/10400.html>

has been able to determine what the acceptable limits of free speech are on the internet.

It must be emphasized that social condemnation and penalization both indicate the limits of what is proper and improper, prohibited and permitted, and what falls outside or within the limits of freedom of expression. In the absence of significant enforcement, the function of the law as a mirror of democratic values other than freedom of expression is also impaired – including with regard to the values of human dignity and equality.²⁷²

Jurisdictional Authority

Any discussion of online freedom of expression must consider the unique characteristics of this arena – not only in terms of the impact of the content it hosts, but also in terms of the rules of legal liability on the internet, the possibilities of enforcement, and the conduct of online discourse mediators, including internet service providers, search engines, and the social networks themselves.²⁷³

In legal terms, online incitement published from within the territory of Israel, or by a person present in Israel, are subject just like any other publication to the Penal Code and the offenses established therein – incitement to racism and incitement to violence.²⁷⁴ The publisher is not always present in Israel, since the internet arena is a global one, but in such instances, the court takes the position that part of the offense was indeed committed in Israel, and regards the case as a domestic offense. Accordingly, the physical location of the offender outside Israel, or even the location of the computers, does not necessarily grant immunity from criminalization in Israel.²⁷⁵

²⁷² Negbi, note 168 above, 505.

²⁷³ Elkin-Koren, note 179 above, 406.

²⁷⁴ Assaf Harduf, "Penal Codes Surfing Online: The Virtual Physical Element," *Hapraklit* 52 67 136-7 (5773).

²⁷⁵ Chaim Wissmonsky, "Criminal Investigation on the Internet within the Limits of Territory," *Hapraklit* 52 309, 320 (5773).

The best-known case in which this issue was discussed involved the Victor Chandler gambling site. The website's servers are located in Gibraltar, where all forms of gambling are permitted, but it offers online gambling services around the world, including Israel. Indeed, part of its content is specifically directed at the Hebrew-speaking market. On arriving in Israel, the owner of the gambling site was detained for questioning on the grounds of the *prima facie* offense of organizing prohibited gambling. When the question of Israeli jurisdiction was raised, the court ruled that the act of gambling is perceived as one that takes place on the computer of each of the site's users in Israel. Accordingly, the offense was also committed in Israel and is to be considered a domestic offense.²⁷⁶

In a further case in 2006, someone known as Halemo published a photograph of the chief commissioner of the Israel Police at the time, Moshe Kradi, doctored to make it appear that he was wearing a Nazi uniform. The photograph appeared on the rotter.net forum, whose servers are situated in the United States. Halemo, who was accused of "offending a public servant," raised a preliminary claim concerning lack of jurisdiction, since the place of the alleged publication was the United States.²⁷⁷ The court rejected the claim and established: "The fact that the photograph was uploaded by the defendant while he was present in the territory of the State of Israel is sufficient, for the purposes of the matter, to substantiate the domestic nature of the offense... It is sufficient that part of the offense was committed in the territory of the State of Israel for the offense to constitute a "domestic offense."²⁷⁸ As the court noted, accepting this preliminary claim would indeed create an absurd situation: "Accepting the defendant's claim that this was an 'external offense' would denude the words of the law of any content, since any offense committed by means of a website whose server

²⁷⁶ Ibid.

²⁷⁷ Ibid., 321.

²⁷⁸ CA (Akko) 1826-08, *State of Israel Galilee Prosecution Office – Israel Police v Moshe Halevy*, decision dated 7 January 2009, 6.

is situated outside the territory of the State of Israel, when in that country in which the server is situated the act does not constitute an offense, would not be punishable in Israel. This is an absurd outcome that is inconsistent with logic and common sense.”²⁷⁹

Against this background, we will now examine the provisions of international law regarding incitement in general and online incitement in particular.

International Law

In addition to the criminal prohibition against racism in Israeli law, the prohibition against incitement has also been enshrined in several international treaties, including treaties to which Israel is a signatory. In addition, as international recognition of the prohibition against incitement to racism spread, so there is increasingly a tendency for customary law to prohibit such incitement. The significance of this is that even countries which have not signed treaties prohibiting incitement against racism are obliged to act to uproot incitement. We will now examine the provisions of international law regarding the relationship between freedom of expression and incitement in general, and online incitement in particular.

Universal Declaration of Human Rights

The Universal Declaration of Human Rights includes a list of human rights that member states of the United Nations are obliged to ensure for their populations.²⁸⁰ The declaration was adopted by the United Nations General Assembly in 1948 and interprets the term “human rights” as it appears in the organization’s charter. The declaration is binding on all members of the United Nations and is perceived as part of customary law – that is, a norm

²⁷⁹ Ibid., 5.

²⁸⁰ Article 2 of the Universal Declaration of Human Rights:
<http://www.un.org/en/documents/udhr/>

that has been adopted by the international community and has acquired binding legal status, thereby constituting part of law in the State of Israel.

Article 7 of the declaration states: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."²⁸¹ Article 19 establishes the right of all people to freedom of opinion and expression.²⁸² However, article 29(3) prohibits the exercising of the rights in the declaration in a manner "contrary to the purposes and principles of the United Nations."²⁸³ Article 30 of the declaration establishes that nothing in the declaration is to be interpreted as implying any right "to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth" in the declaration.²⁸⁴ The accepted approach is that although the Universal Declaration of Human Rights protects the right to freedom of expression, this right does not include the right to make statements that incite racism.²⁸⁵

International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights formalizes the principles established in the Universal Declaration of Human Rights in a covenant that is binding on the signatories. The State of Israel signed the covenant on 19 December 1966 and ratified it on 18 August 1991.²⁸⁶ Article 19(2) of the covenant establishes the universal right to freedom of

²⁸¹ Article 7 of the Universal Declaration of Human Rights.

²⁸² Article 19 of the Universal Declaration of Human Rights.

²⁸³ Article 29(3) of the Universal Declaration of Human Rights. According to article 1(3) of the UN Charter, one of the basic goals of the United Nations is to promote respect for human rights without distinction as to race, sex, language, or religion.

²⁸⁴ Article 30 of the Universal Declaration of Human Rights.

²⁸⁵ Elizabeth F. Defeis, "Freedom of Speech and International Norms: Response to Hate Speech," 29 *Stan. J. Int'l L.* 57, 75 1992-1993.

²⁸⁶ The covenant acquired the force of a binding legal norm in Israeli law on 3 January 1992.

expression.²⁸⁷ Article 19(3) of the covenant establishes that the exercise of the right to freedom of expression and the right to seek, receive, and impart information and ideas “carries with it special duties and responsibilities.” Accordingly, this use may be subject to certain restrictions, which must be stipulated explicitly in law and are required “for respect of the rights or reputations of others [and] for the protection of national security or of public order or of public health or morals.”

Thus the covenant permits the restriction of the right to freedom of expression in order to protect the rights of others or to protect other value-based considerations.²⁸⁸ Accordingly, the covenant recognizes the justification for establishing a prohibition against inciting statements.²⁸⁹ Indeed, article 20 of the covenant not only permits countries to impose a prohibition on incitement, but actually requires them to do so, stating: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” The United Nations Human Rights Committee was aware of the problematic nature of restrictions on freedom of expression, but saw no contradiction between the right to freedom of expression and the prohibition against incitement. Its approach was that the right to freedom of expression is subject to the underlying principles of human rights law.²⁹⁰

²⁸⁷ Article 19(2) of the International Covenant on Civil and Political Rights: <http://www.hrweb.org/legal/cpr.html>

²⁸⁸ Defeis, note 286 above, 83.

²⁸⁹ This section also appears in article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which has been signed by many members of the European Union: <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>

²⁹⁰ Stephanie Farrior, “Molding the Matrix: The Historical and Theoretical Foundations of International Law Concerning Hate Speech,” 14 *Berkeley J. Int’l L.* 1 (1996) 5-6.

International Convention on the Elimination of All Forms of Racial Discrimination

This convention was adopted by the United Nations General Assembly in 1963. Article 4 of the convention discusses the subject of incitement to racism:

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

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

[...]

This article is more far-reaching than article 20 of the International Covenant on Civil and Political Rights, since it requires countries to prohibit not only incitement to discrimination, but also incitement to racial hatred.²⁹¹

²⁹¹ Defies, note 286 above, 87.

Convention on Cybercrime

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The Convention on Cybercrime was adopted by the Council of Europe and has been signed by 46 countries. An additional protocol attached to the convention requires the signatories to establish that the distribution or making available of racist and xenophobic material shall constitute a criminal offense.²⁹² The protocol also requires the signatories to establish a criminal offense for threatening a person or group through a computer system due to their race, color, descent or national or ethnic origin, or religion,²⁹³ as well as a criminal offense on account of publicly insulting a person or group distinguished by any of the above-mentioned characteristics.²⁹⁴ The protocol additionally imposes an obligation on the signatories to establish a criminal offense for aiding and abetting the said activities.²⁹⁵

Israel is not a signatory to the Convention on Cybercrime or the attached protocol. However, the adoption of the protocol by such a large number of countries will grant it the status of "customary law."²⁹⁶ Thus, its provisions enjoy binding status throughout the world, and not only in the signatory countries. Accordingly, in the future the convention may also be binding in the State of Israel.

²⁹² Article 3(1) Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems (Strasbourg, 28 January 2003): <http://conventions.coe.int/Treaty/en/Treaties/Html/189.htm>

²⁹³ *Ibid.*, article 4.

²⁹⁴ *Ibid.*, article 5.

²⁹⁵ *Ibid.*, article 7.

²⁹⁶ R. R. Baxter, "Multilateral Treaties as Evidence of Customary International Law," 41 *Brit. Y.B. Int'l L.* 275 1965-6.

Conclusions and Recommendations

For the first time, this report provides a comprehensive review of the phenomenon of online incitement to racism and violence against the Arab population. The report paints an extremely alarming picture of the violent discourse that is prevalent on social networks and websites with the intention of inciting hatred against the Arab population. The report also highlights the absence of a proper response to this phenomenon by the authorities in general, and law enforcement agencies in particular. As a people who suffered from appalling manifestations of racism in our own history, we bear an obligation to struggle with all our might against such pernicious phenomena. Regrettably, the enforcement of the law against those who engage in incitement is defective both because additional tools for combating racism need to be developed, and because there is such a reluctant approach to use the tools that already exist.

The responsibility for uprooting racism in general and online incitement to racism in particular rests primarily with State authorities. However, successfully eliminating racism in the long term, requires concerted action that by civil society, internet users and the State. The following sections detail IRAC's recommendations for combating the phenomenon of online incitement to racism and violence.

State Authorities

■ **Establishing an Authority for Internet Safety**²⁹⁷ – it is important that there be a single governmental body to coordinate all actions in the field in order to secure meaningful change. The authority will act to promote online safety and will address not only the issues of racism and violence, but also

²⁹⁷ The recommendation to establish a department for Internet Safety in the Ministry of Justice and the recommendation to establish an authority for Internet safety are based on the report of the Internet Advisory Board to the Irish government. O'Neill, note 6 above; the Ministry of Justice in Ireland has established a similar body:
<http://www.internetsafety.ie/website/ois/oisweb.nsf/page/index-en>.

additional issues, such as online bullying and pornography. The authority's functions will be:

- To formulate coherent and consistent policy, including proposing actions designed to protect online safety; among other issues, this policy must define a desirable relationship between internet suppliers, the State, and internet users in the context of online incitement.²⁹⁸
- To create cooperation between the various organizations involved in the field (such as the police Cyber Unit);
- To operate the hotline currently run by the Ministry of Justice;
- To prepare sources examining ways to address online incitement for parents, teachers, and students;²⁹⁹
- To publish these materials on a website in Hebrew, Arabic, English, Russian, and Amharic;
- *To develop campaigns and raise awareness of ways to confront the phenomena of online violence and incitement. In addition to general campaigns, specific campaigns should be developed for particular groups that are exposed to incitement, such as young people;
- To develop guidelines for schools concerning the integration of policy against incitement in the context of students' activities in social media.

■ **Promoting legislative amendments** – any legislative arrangement of online activities must be moderated in order to avoid impeding the development of the web and associated technologies. Amendments must not effect an unwarranted and unwanted curtailment of freedom of expression nor veer toward excessive deterrence; they must not impair

²⁹⁸ O'Neill, note 6 above, 14.

²⁹⁹ Since this report examines the subject of online incitement, the recommendations also focus on this aspect. However, the Authority of Internet Safety will also publish materials relating to other problematic online activities, such as bullying and pornography.

freedom of information nor creativity, and must not lead to the centralization of the internet in the hands of major socio-political or commercial entities at the expense of smaller collectives.³⁰⁰ It is also important to take into account the existing possibilities for enforcement.

■ **Legislative adaptations** – the State Attorney’s Office and the Ministry of Justice should formulate a document reviewing the implementation of the existing legal provisions concerning incitement to racism and incitement to violence in the context of online incitement. The Knesset Elections Law, for example, has not been updated in response to the current technological reality.

■ **Incitement to Violence and Racism** - Incitement to racism and incitement to violence are criminal offenses. Despite the presence of punitive legal provisions, very little use has been made of these legal tools over the years to uproot the phenomena of online racism and incitement to racism. The basic reason for this is a reluctance to use criminal law to address social phenomena (however negative they may be) that are manifested in speech, as opposed to action. As noted, due to the desire to limit injury to freedom of expression, the legislator has established serious restrictions in the penal code on the filing of an indictment on account of racist incitement. These restrictions are reflected in the demand that any indictment for incitement offenses be approved by the attorney general, and that the mental element (*mens rea*) of the intention of inciting to racism be proved. The net result of these restrictions is that the provisions in the penal code are an ineffective tool for preventing manifestations of racism. With this in mind, it is important to develop civil tools that can assist the struggle against incitement to racism and violence. IRAC is promoting two proposed civil laws to address this field:

³⁰⁰ Agmon-Gonnen, note 244 above, 222.

- **Proposed Law: Prohibition of Racist Publication, 5774-2014, P/19/2278** – this proposed law expands the legal tools available for addressing manifestations of racism in Israel. The law proposes the creation of a civil tort of racist incitement, enabling the filing of civil complaints by individuals damaged by manifestations of racism, or by organizations acting to defend the rights of those damaged. The proposal would permit suits to be filed in sums of up to NIS 50,000 without the need to prove damage. This proposal seeks to encourage civil involvement in preventing manifestations of racism, particularly on the part of the individuals and groups who are the victims of these manifestations.
- **Proposed Law: Prohibition of a Discriminatory Publication (Legislative Amendments), 5775-2014** – the proposed amendment seeks to respond to situations in which certain elements publish calls intended to encourage those engaged in the supply of a product or public service, or in operating a public place, to discriminate in the provision of the service, as well as calls intended to encourage employers not to employ Arabs – an act that grants public legitimacy to racism and discrimination. These situations are distinct from a situation where the owner of a business discriminates in the provision of a service or in employment. The proposed amendment would, for example, prevent an organization or private individual from publishing a notice urging business owners not to provide services to Arabs, or the publication of a demand not to employ Arabs, as seen in some of the “Jewish labor” websites on the internet. Under the proposed law, the act of soliciting those involved in providing a product or service to violate the law would also be prohibited and would become a civil tort and a criminal offense included in the Prohibition of Discrimination Law and in the Equal Opportunities at Work Law.

■ **Possibilities for Exposing Anonymous Internet Users** – The concern raised by efforts to expose anonymous internet users is that these tools will be used not to realize substantive rights, but in order to harass people who express criticism, to suppress competition, or simply to create a deterrent effect on people's freedom of expression.³⁰¹ The ruling in the Mor case shows that the law needs to be amended in order to create a suitable legal framework. Accordingly, legislation should be promoted to enable requests to be submitted to the court to expose the identity of anonymous internet users when there is a suspicion that a criminal offense such as incitement to racism has been committed.

■ **Saving Digital Information** – The saving of information should be regulated so that it will be possible to locate internet users suspected of criminal acts or civil torts. In order to ensure balanced legislation, attention should be given to the types of information to be saved, the duration for which information should be saved, the identity of those receiving access to the information, and the conditions for receiving it.³⁰²

■ **Education** – efforts to eradicate online racism must also include educational components that will respond to the phenomenon on a deeper level. Educational tools must be developed – not only relating to incitement to racism, but also in the broader context of coexistence between Jews and Arabs in Israel. The Ministry of Education should act to implement a comprehensive and ongoing program to expose school students in Israel to the value of equality and tolerance toward minorities, and particularly toward the Arab minority, throughout their years of schooling. The following steps should be taken as part of these efforts (based on the Salomon-Issawi Report³⁰³):

³⁰¹ Birnhack, note 245 above, 371.

³⁰² Agmon-Gonnen, note 244 above, 235.

³⁰³ Report of the Public Committee on the Subject of Education for Coexistence between Jews and Arabs in Israel.

- Integrating anti-racist content and programs in the education system from 1st to 12th grade;
- The full implementation of the recommendations of the Public Committee on the Subject of Education for Coexistence between Jews and Arabs in Israel;
- Holding regular meetings between Jewish and Arab children and young people, as a regular part of the education system, from 1st through 12th grade;
- Training teachers, principals, and other education workers in education to coexistence;
- Developing diverse learning materials adapted to different age groups and sectors, available over the internet and through the pedagogical ("Pisgah") centers;
- *Encouraging the establishment of joint schools for Arabs and Jews for those who choose this option;
- Integrating Arab teachers in Jewish schools and Jewish teachers in Arab schools as an educational model for inculcating education to coexistence.
- Study of spoken Arabic in all Jewish schools.

Internet Suppliers and Companies

- **Publishing transparent standards concerning the publication of inciting content** – internet suppliers and companies should publish clear, transparent, and grounded policies concerning the publication and uploading of inciting content and the manner in which complaints can be made against such content.

- **Maintaining a local representative of the company or supplier to examine inciting content** – It is important that those examining content in order to decide on its possible removal are locals who speak the language and are familiar with Israeli culture and norms.
- **Promoting cooperation between internet suppliers and civil society organizations** – in order to ensure enforcement and prevent the uploading or saving of inciting content. An example of such cooperation was seen between YouTube and the Anti-Defamation League, which helped the company to develop its Abuse and Safety Center, which encourages users to identify, confront, and report on inciting content. The Center provides information and links to sources developed by the ADL in order to help people respond to offensive content that violates YouTube’s policy.³⁰⁴
- **Including an anti-incitement clause in internet contracts** – internet suppliers who provide domain names could include a clause in the contract stating that the services are provided on condition that the domain is not used for incitement to racism or violence.³⁰⁵ A significant sanction should be established in the event that this condition is violated in order to ensure proper deterrence, such as a financial sanction or cancellation of the domain.

Civil Society Organizations

- **Ensuring that a different kind of discourse is present online** – civil society organizations can ensure that different language is used online through internet newsletters, Facebook pages, and special websites devoted to promoting the values of tolerance and human rights in the specific context of the internet.

³⁰⁴ Cohen-Almagor, note 168 above, 15:
<https://www.youtube.com/yt/policyandsafety/safety.html>

³⁰⁵ Ibid.

- Monitoring and exposing inciting websites and submitting **complaints to the authorities** – for about a year, IRAC has been monitoring websites that publish incitement. Information about illegal activities involving incitement to racism or violence is forwarded to the Hotline of the Ministry of Justice and complaints are submitted to the attorney general. These activities should be expanded in order to uproot the phenomenon.

Internet Users

While the state must engage in meaningful action, internet users themselves hold the greatest power in combating online incitement. Many people are online almost every day and use the web for most of their daily communication. The following are actions that can be undertaken in this context:

- **Ensuring that a different kind of discourse is present online** – people who encounter inciting content online can respond in a non-violent and non-inflammatory way, proving that it is possible to engage in discourse that promotes equality, pluralism, and tolerance.
- **Using the Hotline of the Ministry of Justice to report instances of online incitement.**
- **Reporting inciting content on internet platforms** – people who encounter Facebook pages that disseminate inciting content can report this to Facebook and help lead to the closure of these pages.³⁰⁶ YouTube and Twitter also allow reports on offensive content.³⁰⁷

³⁰⁶The following report process can be used: Toward the right-hand side of the Facebook page (or the left-hand side in Hebrew), three periods appear. Click the three periods and choose the option "Report Page." In the case of racist incitement, choose the following option: "I think it shouldn't be on Facebook," then choose "It's hate speech," and then choose "A race or ethnicity." Lastly, click "Submit to Facebook for review."

³⁰⁷Agmon-Gonnen, note 244 above, 242.

Conclusion

For about a decade, the Israel Religious Action Center has worked to combat the worsening phenomena of incitement to violence and racism in Israel. Technological developments have made the internet an integral part of our lives, and incitement has spread to the online domain. The anonymity, immediacy, and accessibility of the internet have made it a dynamic marketplace for the exchange of ideas, but have also created fertile ground for the emergence of hate groups and the dissemination of racist and violent content.

This report has attempted to cast a spotlight on the phenomenon of online incitement, to emphasize the full gravity of this problem, and to consider its legal aspects. The report also suggests practical solutions and policy changes that we believe can change the online arena and make it more tolerant.

We are all online, and we all bear responsibility for creating a tolerant society committed to democratic values on the internet, as in real life. We must respond and present a loud and clear voice against incitement to hatred and violence and in favor of discourse that promotes coexistence, tolerance, and solidarity.

The Israel Religious Action Center (IRAC) is the legal and public advocacy arm of the Reform Movement in Israel.

IRAC works for "tikkun olam" in the spirit of progressive Jewish values, focusing on issues of religion and state, and against racism, religious extremism and discrimination.

IRAC fights for freedom of religion and conscience, equality, pluralism, tolerance, and social justice in Israel. IRAC envisions a state with institutional separation between religion and state, where every person can choose freely between the various religious streams and not be discriminated against for choosing one stream over the other.

Since it was founded in 1987, IRAC has been active in the legal and public arena to influence decision-makers, Reform communities and the general public, in order to realize its mission of social change in Israel.

To learn more about IRAC, visit our website www.irac.org or contact development@irac.org