

Non-Jewish Minorities and Their Access to Israeli Citizenship

Demographic Threat Perceptions and Ensuing State Strategies

Lidia Averbukh

On Independence Day in May 2016, the Israel Central Bureau of Statistics announced that the Israeli population had increased tenfold since the State's establishment in 1948. Leading national newspapers rejoiced that the population has multiplied from an initial 800,000 to almost 8.5 million, a figure ascribable to the highest birth rate in the western world among other facts, such as Jewish immigration. This, in turn, can be attributed to the fact that the state seeks to preserve and promote the country's Jewish majority. The downside of this policy is the discrimination of minorities living in Israel, which are deemed a demographic threat. This applies not only to Arab Israelis, but also to the growing number of foreign workers who replace labour forces from the Palestinian territories, and to African refugees whose legal integration within the Israeli citizenship system is not foreseen. Less exclusive access to citizenship and the secure legal status of non-Jewish population groups is likely only to be possible if they are no longer viewed as a threat.

The Basic Laws passed in the 1990s define Israel as a state which is both Jewish and democratic. A similar concept is already mentioned in the Declaration of Independence of 1948. The mandate to reconcile "Jewish" and "democratic" is often interpreted as follows: as long as Israel demonstrates a clearly Jewish majority, the two state precepts do not conflict with one another. In this understanding, the majority of Jewish votes guarantee democratic procedures in a Jewish state, although this concept of democracy is lacking in substance. This stance is in line with the position

adopted by members of the current government, such as the Zionist-nationalist party Likud, as well as the party Yisrael Beiteinu, with its base of secular, Russian-speaking Israelis. A Jewish majority constitutes an expression of state Jewish identity also for the rest of Jewish and Zionist parties, such as the socially conservative coalition party Kulanu, led by Finance Minister Kahan, and the opposition parties Yesh Atid, by Yair Lapid, the central left party Zionist Union and the leftist Meretz. Both of the latter parties also make a greater emphasis on the democratic values.

However, democracy is of little significance to the religious coalition parties which are exerting an ever stronger influence on Israeli politics. They believe that the identity of the Jewish State is based on Jewish religious law (*halakha*). This advocates high birth rates and prevents assimilation through marriages with non-Jews, which could sever the Jewish lineage. The current coalition parties United Torah Judaism and Shas endorse a religious demographic policy. The nationalist-religious party The Jewish Home, led by Naftali Bennett, which also holds seats in the Knesset, unites a Zionist-nationalist with a religious stance.

The collaboration of the Zionist and religious camps within a government which can be traced back to the era prior to the State's establishment proved a decisive factor in the increased population growth within Jewish Israel, as the Zionist and religious interests tally in questions of demographics. As a result, it is hardly surprising that the legal instrument used to create and preserve the Jewish majority, namely Israeli citizenship, has been interpreted as the inclusion of Jews and the exclusion of all other individuals since the State's foundation.

Like other Israeli legislation, the immigration and naturalisation laws allow for a broad range of interpretation, enabling common ground to be found among all the political interest groups and ensuring a relatively large margin of discretion as far as implementation of the law is concerned. It follows that the ideological persuasion of the respective Minister of the Interior is of decisive importance for the interpretation and execution of the immigration and naturalisation laws, i.e. whether he belongs to the secular or religious camp.

Legal implementation practices within a legislative system can thus vary in such a way that Arab citizens of Israel are treated differently to Jewish citizens. If migrants can be categorised neither as Jewish nor Palestinian, such as foreign workers and refugees, then the latitude in terms of laws

and directives can be used systematically in order to prevent the long-term settlement of non-Jewish immigrants and to refuse legal rights. All parties who have provided a Minister of the Interior to date have pursued the policy of expediting Jewish immigration as far as possible, and minimising the settlement and integration of non-Jewish groups.

Demographic background

A Jewish population majority arose in the course of the establishment of the State of Israel and had to be preserved to secure the State's future existence. The founding fathers consequently established a system which sought simultaneously to accelerate Jewish immigration and naturalisation and to restrict the access of Palestinians to Israeli citizenship.

During the almost 70 years of the State's existence, the number of Jewish immigrants has plateaued at a constant, but low average of 20,000–25,000 each year, only slightly exceeding the number of emigrants. As the pool of potential new immigrants is virtually exhausted, non-Jewish groups in Israel are regarded increasingly as a threat. This can be ascribed to a series of historical, social and political factors.

The birth rates of Arab Israelis are deemed a key threat to a Jewish majority. In the political world, this development is referred to as a danger, which could eventually make the Jewish nature of the Israeli State obsolete as a result of the preponderance of Arabs. Today, 20.8 per cent of the Israeli population is Arab. According to statistics published in 2014, an average of 3.11 children are born to Jewish families, and 3.17 children to Arab families.

Although the birth rate among Arab Israelis, which has been in decline since 2002, indicates that the "demographic war" waged within the country has been won, namely in favour of Jewish Israelis, whose birth rate continues to rise rapidly, such facts are by no means sufficient reason for Israeli politicians to refrain from employing

the “demographic threat” in order to mobilise other swathes of the population.

Both Israeli and Palestinian parties promulgate a high birth rate as a type of patriotic duty. In Israel, elections have always been successfully won by instrumentalising fears regarding Palestinians, both those living in the country itself and as far as potential Arab supremacy in the region is concerned. The former Palestinian leader Yasser Arafat also referred to “the womb of the Arab woman (as the) strongest weapon” against Israel. Simultaneously, references to the ecological and economic dangers of Israel’s potential future overpopulation are rare, particularly as regards Jewish Israelis. The Israel Central Bureau of Statistics anticipates that the population will have swelled to between 15 and 20 million by 2059.

The absence of social debate on this issue can be partially explained by the experience of the Holocaust, in the course of which the Jewish people’s fears of extinction were perceptibly substantiated. This fear triggered individual and social traumas which continue to have an impact today. The Holocaust casts its shadow on each crisis in which Israel feels that its very existence is under threat. This applies to the missile attacks from the Gaza strip just as much as to Iran’s negation of Israel’s right of existence.

The social response to these perceived threats is made manifest, inter alia, in increasing birth rates. Nine months after the Israel–Gaza conflict in the summer of 2014, for instance, a baby boom within the Jewish population was noted. The need to compensate past losses with a high number of children, this at least symbolically, and thus protect oneself against possible future losses, is reinforced by the Jewish religious precept of reproduction. Moreover, the Israeli healthcare system offers a variety of methods of artificial insemination.

The religious ban on assimilation also finds expression in the Israeli legal system as far as demographic aspects are concerned. Family law, which is wholly religiously influenced, allows for no intermarriages, as

no civil marriages are recognised. Furthermore, the citizenship system impedes family reunions between non-Jewish partners and the longer-term settlement of individuals who could challenge the Jewish character of the State of Israel.

Citizenship of Jewish and Arab Israelis

The Nationality Law of 1952 determines who is, or may become, an Israeli citizen. In the first instance, Jews from the diaspora making use of the Law of Return; in the second, individuals who were subjects of the former British Mandate at the time of the State’s establishment and who did not flee or were expelled in 1948, and, in the third, children of an Israeli national. In addition, non-Jewish individuals may be naturalised in certain circumstances.

The so-called Law of Return was adopted in 1950 and extended in 1970. It permits all individuals able to trace their Jewish ancestry back to a Jewish grandparent to immigrate to Israel, a regulation which includes their spouses. The Law of Return constitutes the only form of statutory immigration to Israel. It places no restrictions on immigration in terms of age or qualifications. The decisive criterion is an affiliation to the Jewish people. In its level of significance, the law is equated most closely to that of a Constitution, and remains unchallenged by any Jewish political party. The Israeli government organises and expedites Jewish immigration to Israel with the aid of a broad network of international offices operating on behalf of relevant organisations, including the Jewish Agency for Israel and Nefesh B’Nefesh.

The Law of Return continues to constitute a form of reassurance for many Jews, which can be “redeemed” as necessary. Unsurprisingly, almost 50 per cent of the latest Jewish immigrants, who entered between spring 2015 and spring 2016, came from crisis-ridden Ukraine and from France, where anti-Semitism and jihadi attacks are on the rise.

The group of individuals living in the British Mandate for Palestine prior to the State's establishment, and who were ineligible to avail themselves of the Law of Return includes the relations of all Arab population groups and a small number of religious and ethnic minorities. These individuals may only be naturalised if they have been living legally on Israeli territory since the State's proclamation or entered Israel legally until this law's enforcement in 1952. With this, the legal category of the remaining "Arab Israelis" was created, and excluded Palestinians who fled or were expelled during the 1948 War of Independence.

Two further laws, the "Entry into Israel Law" of 1952 and the "Prevention of Infiltration Law" of 1954, stipulate that the return of Palestinians and immigration from enemy states is to be deemed "infiltration" and that prosecution may occur as a result. Palestinian return is the ultimate disaster for Israel, and would ultimately lead to the end of the Jewish state. The restrictive naturalisation policies of the majority of neighbouring states, where Palestinians settled since their flight and expulsion, prevent them from being accepted into a new state collective body, in which they could integrate themselves. As a result of their statelessness, their identity remains firmly tied to the historical territory of Palestine.

Palestinian refugees do not fall within the remit of the United Nations High Commissioner for Refugees (UNHCR), but are, instead, the responsibility of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). According to the Israeli interpretation, they therefore fail to fall within the scope of the internationally recognised definition of refugees, and have no right to asylum in Israel in consequence. At the same time, neighbouring states consolidate the Palestinian refugee problem as regards accusations towards Israel. The refugees remain in a legal vacuum – with no prospect of a naturalised status in the host countries,

and little hope of enjoying an individual future citizenship.

Israeli citizenship can also be transmitted in accordance with the principle of birthright. Israelis abroad can pass on their citizenship to the next generation, although this right expires in the second generation. This marks a fundamental difference between Jewish and non-Jewish Israelis, as the Law of Return permits Jewish emigrants to return to Israel for at least a generation longer than their compatriots. By contrast, all non-Jewish Israeli emigrants lose Israeli citizenship and the right to return in the second generation.

The status of Palestinians from East Jerusalem is a special case. Although these individuals do not hold Israeli citizenship like Arab Israelis, they do have a permanent Israeli residence permit, unlike Palestinians living in the West Bank and on the Gaza Strip. This is not automatically inherited, and may be revoked in the event of a prolonged stay abroad.

Finally, the right to family reunions and the naturalisation of non-Israeli partners is enshrined in the Nationality Law. However, the "Entry into Israel Law" was extended in 2003. Since then, spouses of Israeli citizens have no longer been permitted to immigrate to Israel and may not obtain Israeli citizenship if they come from Gaza or the West Bank. Conceived as a temporary safeguarding measure, the extended version of the law continues to apply today, and has far-reaching consequences for Palestinian families who are frequently connected across borders. Since its modification, the law has been the focus of public criticism, chiefly from the left-wing parties, and numerous human rights organisations. The implementation of the legal provisions related to naturalisation is also problematic. Although they permit the *de jure* naturalisation of all immigrants if they fulfil criteria including language skills and duration of stay, the few individuals who have actually been naturalised in accordance with these regulations are predominantly spouses of Jewish Israelis.

Deep-seated fears of external “infiltration” and the rise of the Arab population within the country constitute chief motives for the restrictive immigration and naturalisation policies towards Palestinians. The legally constructed pair of opposites of “Jewish Israelis/Arab Israelis” pervades the entire citizenship system. One could even describe it as two discrete nationalities within a single legal framework.

Other forms of immigration

The Israeli citizenship system does not provide for the systematic settlement of non-Jewish immigrants. As a result, no organised procedure regulating how these individuals can obtain a controlled, permanent status within Israeli society exists. A few years ago, the relatively new phenomenon of a high influx of non-Jewish immigrants and those wishing to settle triggered a public debate on ways in which the citizenship system could be reformed. To date, however, its legal shortcomings and contradictions have not been resolved. Instead, it has been used systematically in order to ensure that non-Jewish minorities within the State are kept to a minimum, and to prevent legal claims from such groups gaining ground. As far as the stance on the situation of non-Jewish minorities is concerned, two camps can be identified. On the one hand, there is the party Meretz, individual party members of the Zionist Union and countless human rights organisations and NGOs, and, on the other, the religious and Zionist-nationalist parties which currently make up the government.

Migrant workers

Israel has been home to a large minority of non-Jewish migrant workers since the 1990s. These are illegal immigrants who enter Israel on tourist visas and look for work, foreign workers hired in the Far East who hold temporary work visas, and, finally, those who remain illegally in Israel after their work visas expire. According to

data published by the Israel Central Bureau of Statistics, around 91,000 registered and approximately 101,000 illegal migrant workers were living in Israel in 2014.

Some illegal migrants have now been living in Israel for over two decades, and many of these have children born in the country. As they are ineligible for any state social security benefits as a result of their illegal residence, local network structures have been created which secure a minimum social standard. The government categorically declares that all migrant workers are only residing in Israel on a short-term basis. As a result, no state-run programmes exist, with the aid of which this group of individuals could be integrated into society and receive a permanent legal status. With this, Israel has created for itself a catch-22 situation, similar to other countries which rely on labour migration: on the one hand, an economic necessity exists which requires foreign workers to enter the country, yet, on the other, the political willingness to grant such individuals a share in both state and society is lacking.

Furthermore, migrant workers live separated from the Jewish population, which prevents even the slightest degree of integration or assimilation. This separation is induced, among other things, by legal grey areas. No coherent regulations exist, for instance, on whether conversions to Judaism performed within Israel are recognised by the Law of Return and can, in consequence, be used in order to obtain Israeli citizenship. In practice, attempts to become naturalised in this manner have been prevented either by the Supreme Court (2005) or by religious stakeholders. The religiously-motivated refusal to grant these non-Jewish immigrants full rights is also corroborated by common parlance. The official Hebrew designation for foreign work (“avoda zara”) corresponds to the religious term for “idolatry”.

It is conceivable that the problems stemming from this legal situation will intensify as a result of the fact that the need for migrant workers is likely to increase. In addition, many Palestinians from the West

Bank who once worked in Israel have had their entry and work permits revoked since the commencement of knife attacks – the so called lone-wolf-Intifada – on Israelis. As was the case during previous escalations of the conflict, an increased recruitment of workers from the Far East could ensue. Yet in contrast to the Palestinian workers who return to the West Bank each evening, many of the new migrant workers are likely to attempt to stay on a long-term basis.

A correlation between the Israeli-Palestinian conflict and labour migration can be determined in consequence. For Palestinians, the conflict has resulted in their access to Israel becoming increasingly restricted, thus endangering their economic livelihoods. In Israel, however, labour migration and the subsequent constant presence of non-Jews are viewed as a threat to the State's Jewish nature. This dynamic is aggravating the situation of Palestinian workers, and simultaneously subverting Israel's sense of identity.

Refugees

As far as the treatment of refugees is concerned, it should also be noted that the rhetoric of the current government systematically questions the legitimacy of their residence, and strives to stigmatise them as “economic migrants” and “infiltrators”. According to this logic, the State's Jewish identity, which is linked to a Jewish majority, conflicts with the right to asylum.

Israel signed the Geneva Convention relating to the Status of Refugees, and thus committed itself to accepting international standards related to refugees and granting these individuals the right to asylum. Like many other countries, however, Israel considers itself confronted by a disproportionate number of refugees, and believes it is obliged to bear an overly heavy load in this respect. Yet the 45,000 refugees constitute a mere 0.5 per cent of the country's total population of 8.5 million. Since 2006, Israel has become the destination of choice for refugees from Sudan and Eritrea, in particu-

lar. This is because Israel is the only country in relative proximity theoretically obliged to guarantee them minimal legal standards. These refugees are the poorest of the poor, who lack both the networks and funds required to risk the journey to Europe.

In order to satisfy the very general demands of the Geneva Convention relating to the Status of Refugees and, simultaneously, to apply the law of asylum restrictively in the national interest, the Israeli government performs a legal balancing act. Although the UNHCR monitors the overall refugee situation and provides assistance with asylum applications, the final decision on each application has been made by the Israeli Ministry of Interior since 2009. Between 2013 and 2015, Israel granted asylum to just 45 applicants. This can be explained by the fact that numerous refugees have been denied refugee status and, with this, the right to apply for asylum.

Sudanese refugees, for instance, are unable to apply for asylum as a rule, as they are deemed to come from an enemy state in accordance with the latest version of the “Prevention of Infiltration Law” of 2012. This law also holds that refugees who enter the country on foot via the Egyptian-Israeli border fall into the category of “infiltrators”. However, deporting these individuals back to Egypt is considered politically indefensible since the revolution, and would result in protests by the opposition and countless human rights organisations. As a result, these refugees are interned indiscriminately in a series of detention camps set up near the border.

Conclusions and recommendations

An analysis of the Israeli citizenship system reveals how access to citizenship is determined not individually, but rather in accordance with group affiliation within legal framework.

The existence of a Jewish majority lessens the Jewish people's fears of extinction and legitimises Israel's self-identification as a Jewish State. The resulting demo-

graphic policy, meanwhile, consolidates the exclusively Jewish claim to the territory and excludes Palestinians and Arab Israelis by depriving them of rights or refusing to concede them said rights initially.

The inadequate official regulation of non-Jewish groups such as migrant workers and refugees carries the risk of social tension. In the light of the increasing levels of xenophobia within the population, the need for political discourse on this subject is becoming ever more urgent. The longer the country fails to deal with these immigrants, depriving them of a secure legal status within the citizenship system, the greater the probable sense within the Israeli population of being left to deal with the problem of an undesirable minority.

The fact that xenophobic populism in Israel is falling on fertile soil is borne out by the growing number of citizens' initiatives and regular demonstrations against non-Jewish immigrants. In this respect, the social response to government immigration and naturalisation policies in Israel bears a resemblance to similar reactions in numerous European countries. The inadequate integration of migrant workers and the piecemeal legal status of refugees are issues which have long been a thorn in the side of Europe.

However, the Israeli government chooses not to curb or check the xenophobic tendencies. On the contrary, the current government is not immune to populism, with the result that there is no appreciable difference between its treatment of Palestinians and non-Jewish migrants and the stance taken by the population. Yet, above all, the Israeli government remains resolutely silent as it regards the fact that the problems described above are, not least, a result of the Israeli-Palestinian conflict.

The Jewish-Israeli insecurity as far as the future demographic constellation is concerned is derived from several sources. On the one hand, the governing parties lack the political will to explicitly emphasise the reality of a largely predominant Jewish majority within the heartland to their own

voters, and to renounce the allusions to a demographic threat by the birth rates of Arab Israelis. On the other, demographic prognoses confined to the Israeli heartland are of limited informational value in the face of the ongoing occupation of the West Bank. The continuation of this unsatisfactory status quo and the scenario of a one-state solution which could develop both increase insecurity in the region. In the absence of a clear definition of the future national population, a proper debate on the subject of an alleged demographic threat is just as unlikely as a reform of Israel's citizenship laws.

As a result, the two-state solution probably remains the most realistic way of stabilising Israel's identity as a Jewish, democratic state and securing it in the long term. However, which stakeholders in Israel's current party landscape would, generally speaking, be in a position to shatter the status quo and, simultaneously, make suitable partners for Europe and Germany?

At first glance, collaborations by European governments with the current opposition parties the Zionist Union and Meretz appear most plausible. Located on the left of the Israeli political spectrum, these parties believe that there is more to the "democratic" principle of state than a mere right to vote. As a result, they correspond most closely to the European idea of Israel as the sole democracy in the Middle East. They endeavour to secure the rights of non-Jewish inhabitants, who represent around 20 per cent of the total population. In a country in which religion is steadily gaining ground, they are unable to command majority backing, and are unable to offer even their core voters a convincingly liberal, secular concept of "Jewishness".

Simultaneously, European cooperation with the left-wing political spectrum is eyed with suspicion in Israel, and criticised as a biased attempt to influence domestic policy processes. As a result, it meanwhile seems reasonable to consolidate the constructive dialogue with the Israeli parties capable of winning a majority, which, although located right of centre according to European and

German standards, are deemed “Centre-right Parties” within Israel itself. Here, we are referring to the coalition parties Kulanu, Likud and Yisrael Beiteinu, and, in the latter case, predominantly its pragmatic wing. In contrast to religious right-wing parties, these groups are committed to democracy, and the majority of their members continue to adhere to the idea of a two-state solution, even if the border demarcation may not necessarily conform to the internationally recognised “Green Line” (armistice line of 1949). However, these parties are the only ones which could count on the support of the populace in the event of a rapprochement with the Palestinians and reforms in the field of demographic policy. Furthermore, within the present government, they constitute those stakeholders most suited to furthering the peace process and altering the legal status of minorities in the process.

© Stiftung Wissenschaft und Politik, 2016
All rights reserved

These Comments reflect the author’s views.

SWP
Stiftung Wissenschaft und Politik
German Institute for International and Security Affairs

Ludwigkirchplatz 3–4
10719 Berlin
Telephone +49 30 880 07-0
Fax +49 30 880 07-100
www.swp-berlin.org
swp@swp-berlin.org

ISSN 1861-1761

(Elaborated version, based on SWP-Aktuell 58/2016, written by Lidia Averbukh and Dani Kranz)