

## The Gavison-Medan Covenant on the Law of Return

**Principle of Return:** Every “member of the Jewish people” will be eligible to immigrate to Israel, including the child of a Jewish father and a person who has converted through a recognized procedure. Even someone who converted in a manner that diverges from the tradition of the “Shulhan Arukh” will be entitled to register himself as a Jew in the population registry.

### Main Points of Ruth Gavison’s Explanation

#### Background

The first chapter is comprised of four topics (return, citizenship, population registry and conversion), all of which revolve around one central issue: the Jewish collective – its character, the connection between it, the Land of Israel and the State of Israel, the connection between Jews in Israel and in the Diaspora, and primarily, how one goes about joining the Jewish people and how membership in this collective is determined.

#### The Current Situation and the Difficulties Posed

The proposal addresses the difficulties of the current situation, and it is more easily understood against the backdrop of these difficulties.

The *first difficulty* is related to the argument over the principle of Return. Arab citizens of Israel, the Palestinians and Arab countries have always opposed the Law of Return, viewing it as unacceptable discrimination on the basis of religion or nationality. The religious definition of a “Jew” that has appeared in the Law of Return since its amendment in 1970 has reinforced criticism of the law by many Arabs, leading to Israel’s portrayal as a theocracy – an entity with no right to self-determination according to the laws of the world’s nations. Radical left Jews have lent their support to this critique as well. According to the critique, even if there was once a certain justification for the Law of Return during the early years of the state, that justification has lost its validity.

The *second difficulty* stems from the internal Jewish debate over the definition of “Jew” in the Law of Return and the population registry. Should the definition be religious? National? Who should decide? From our standpoint, the key question is the institutional one: Is the issue a subject for political negotiations to be conducted in government institutions, a question of Jewish law to be determined by religious institutions, or perhaps a question of fundamental human rights, to be decided by the courts?

The *third difficulty* arises from the automatic, immediate bestowal of citizenship on current immigrants to Israel under the Law of Return. This situation often exposes the state to unrestricted waves of immigration liable to injure the welfare of its established citizens and residents. It also enables immigrants to take an active part in elections before they have become fully integrated into the life of the state and developed an understanding of the fabric of life here and of the country’s particular problems.

The *fourth difficulty* stems from the overly comprehensive scope of the Law of Return at present. The principle of Return, even according to its supporters, is meant to promote the fulfillment of the Jewish people's right to political self-determination in Israel. The current arrangement (clause 4a in the Law of Return) confers the right to immigrate to family members as well, extending as far as to the wife of a man whose grandfather was a Jew, even if this Jewish grandfather, all of whose relations are gentiles, is no longer living and even if he is living but never immigrated to Israel himself. These arrangements are neither logical nor just, especially in light of Israel's (legitimate) opposition to the realization of the "Right" of Return to which the Palestinians lay claim.

The *fifth difficulty* derives from the nature of the current solution contained in the Law of Return: A narrow halakhic definition of "Jew", together with the expansion of the circle of those eligible to immigrate. By adopting an exclusively halakhic definition of the boundaries of the Jewish people, this solution undercuts the broad meaning of the Jewish people and of the mutual responsibility that exists among it, despite the fact that in the current socio-political reality, a considerable portion of the public – both Jewish and non- Jewish – does not view the boundaries of the Jewish people in this fashion.

#### Main Points of the Proposal: Addressing the Difficulties

The proposal is intended to address at least partially the above difficulties.

#### *The Principle of Return*

My basic premise is that it is legitimate for the Jewish people to fulfill its right to self-determination in the State of Israel. This legitimacy justifies adopting an appropriate immigration policy.

Such policies are an accepted practice in international law, and are in place in a number of nations. With regard to the Jewish people there is another justification as well – that of reverse discrimination. We thereby advocate that the principle of Return be anchored in a Basic Law rather than an ordinary law, which is the current state of affairs (For a more extensive discussion of the issue see clauses 1-3 of our proposal). Anchoring the law at the constitutional level is fitting from a symbolic point of view, but it is also important in case the principle is ever challenged against the principle of civil equality (a challenge which presupposes two controversial assumptions: 1. that the principle of equality is anchored in the Basic Laws; and 2. that the Basic Laws confer upon the courts the right of judicial review). For the same reason we also suggest securing the general definition of eligibility for Return at the constitutional level: "a member of the Jewish people", through a national rather than a religious ("who is a Jew") definition. I believe that by so doing we provide an answer to the first and fifth difficulties in the existing arrangement enumerated above (the religious definition of a Jew on a narrow halakhic basis).

#### *Who is eligible for immigration – Expansion on two fronts:*

The proposed arrangement excludes people who do not define themselves as Jewish, but does not reject someone who views himself as Jewish yet whose concept of Judaism diverges from the halakhic Orthodox interpretation. Our proposal expands the circle of eligibility for immigration on two planes.

First expansion – born of a Jewish father: This is based on a halakhic definition for purposes of determining the Jewishness of the parents of someone who applies to immigrate to Israel, but not for purposes of determining the Jewishness of the applicant himself. The child of a Jewish father (a father who is Jewish according to halakha, i.e. whose mother is Jewish) will be entitled to immigrate to Israel, even if the mother of the applicant himself is not Jewish.

Second expansion – One who joins: According to our proposal, a “member of the Jewish people” includes anyone who converted through a serious, reliable conversion process accepted by a recognized stream of Judaism (Orthodox, Conservative or Reform) and to whom one of the following conditions applies:

1. He maintains a Jewish lifestyle, or 2. He is persecuted on account of his Judaism. These supplementary conditions were added in order to ensure that the conversion was genuinely performed for purposes of joining the Jewish people (clause 4 of our proposal regarding the principle of Return).

#### *Joining – Not by way of conversion?*

Our proposal permits recognition of the act of joining even without a formal conversion process (as can be inferred from the language: “One way of joining the Jewish people is through conversion” – clause 6 of our proposal regarding the principle of Return). It is desirable to enable a person to join without conversion. This approach derives from the Jewish-cultural-secular worldview, according to which it is possible to maintain a genuine bond with the Jewish people based on Hebrew culture, language and literature. Inclusion of this type of expansive category can offer an opportunity for creative development in the most difficult issues of contemporary Jewish identity. In my opinion, this definition is called for in view of the Jewish reality in the United States today, and even more so because of the reality to be expected in the next generation.

#### *A “second-class” Jew?*

People have told us that we are reinforcing the distinction between a “full” (Orthodox) Jew and a “member of the Jewish people”, whose Judaism is “in question”.

The criticism implies that a more creative and flexible thought process could have produced a unified resolution of the question “Who is a Jew”, a hope voiced by David Ben Gurion in his letter to rabbinic scholars. For our part, we acknowledge that a uniform definition is not possible, preferring instead to adopt a solution that distinguishes between the different contexts in which the question of affiliation to the Jewish people arises.

#### *Citizenship and Naturalization*

Israeli citizenship is a subject that must be treated seriously, and should require a period of acculturation and a declaration of loyalty to the state before being awarded – even to someone who immigrated in accordance with the Law of Return. We differentiate between Aliya – fulfilling the right to settle in Israel – and the acquisition of citizenship, which also affords the right of political participation in elections. This will promote equal treatment in naturalization procedures. Enlistment in full IDF service will exempt a person from the adjustment period.

Requirement of an adjustment period makes naturalization under the Law of Return similar to naturalization in other ways.

Conferral of citizenship by a citizen: We propose equalizing the ability to confer citizenship so that it is the same for Jews and non-Jews, and adding a general condition: A citizen will be entitled to confer citizenship on his child only if he himself is a resident of the state (clause 2 of our proposal regarding arrangements for acquiring citizenship). The purpose of the change was to ensure that citizenship be granted only to someone who has a genuine connection with Israel. The change will not harm someone who resides abroad for a limited period of time (such as a student).  
The circle of those eligible for citizenship: We advise substantially restricting clause 4a of the existing Law of Return, by enabling those persons eligible to immigrate to confer citizenship only on members of their immediate nuclear family (clause 4 of our proposal regarding arrangements for acquiring citizenship).  
This helps resolve the fourth difficulty in the existing arrangement mentioned above (broad circle of eligibility).

### *Population Registry*

Registration of nationality: This is the only point in the entire covenant regarding which we failed to reach agreement (clause 2 of our proposal regarding population registry and conversion). I suggested eliminating the category of nationality in the population registry and the identity card. Rabbi Medan recommends leaving it and enabling Jews to register their nationality as “the People of Israel”. In my opinion, this is a problematic suggestion: Israeli citizenship is supposed to be neutral with regard to nationality or religion, while here it is given a specifically Jewish cast. Is “the People of Israel” the Jewish people in Israel and the Diaspora? Only in Israel? Or does it comprise the entire Israeli nation, with all its citizens, including the non-Jews?

I am not in any way minimizing the profound significance of national affiliation. On the contrary, it is possible and to my mind necessary to continue educating people according to a worldview that acknowledges their religious or national identity as an important component in the quality of their lives. But there is no imperative that this discourse on issues of identity be accompanied by official state registration.

### *Registration of religion:*

We suggest that the population registry be based on a person’s own declaration, thus allowing someone who converted through a non-Orthodox conversion to register himself without any problem; this registration, however, will be transparent and will include the type of conversion (clause 3 of our proposal regarding population registry and conversion). The proposed transparency has evoked resentment among the non-Orthodox streams, to my mind without justification. The wish to conceal the type of conversion is unfounded. Registration cannot resolve the debate over the validity of non-Orthodox conversions. It can only prevent the exercise of a monopoly by the Orthodox over who is to be registered as a Jew in the population registry. The separation between the intra-religious question and the state’s population registry is designed to address the second difficulty mentioned above in the existing arrangement (the “institutional” difficulty).

### *Conversion*

Only a person who converted before immigrating to Israel, and not for the purpose of immigration, will be eligible to immigrate under the Law of Return. I supported the recommendation that persons wishing to convert take the Ne’eman Committee route; the committee proposes maintaining the Orthodox monopoly over the rabbinic courts that perform conversions, while simultaneously opening a joint seminary for

conversions (clause 5 in our proposal regarding population registry and conversion). Predictably, there were representatives of the non-Orthodox movements who complained about this recommendation. I understand those who are disappointed by the manner in which the attitude towards the Ne'eman Committee recommendations developed. Our proposal supports the recognition and registration of non-Orthodox conversions in Israel – first, because it is desirable to permit someone who wants to join a non-Orthodox community to convert according to the rules of his community. But more importantly, Orthodox conversions, at least in the way they are carried out by some rabbis, obligate the individual to observe the commandments and to educate his children in a religious institution. The result is that someone who does not intend to keep the commandments is precluded from converting, or he is compelled to lie in order to convert, and lives in perpetual fear that his conversion will be annulled simply because he wants to live in Israel without having to observe the commandments.

Our proposal, then, resolves the practical problem of conversion for the purpose of acquiring Israeli citizenship. It recognizes conversions performed by every stream and allows them to be registered according to an inclusive approach while guaranteeing transparency.

At the same time, I reassert my recommendation regarding the Ne'eman Committee, independent of Return or the population registry. There is only one way of joining the Jewish people that is acceptable to all streams, and that is the Orthodox way. This is a fact. No law promulgated by the state and no political agreement is going to change this. Israel is home to a large Orthodox community. It will be easier for someone who plans to live in Israel to become Jewish in a manner that is also recognized by halakha. Nevertheless, since most Jews who live in Israel do not keep the commandments, I see no reason to demand that those who join us embrace a specifically Orthodox way of life. I believe that the leaders of Orthodoxy should display suitable flexibility and enable persons to join even without a commitment to follow a religious lifestyle. I know there are Orthodox rabbis who implement this approach in practice. The problem, as usual, is one of leadership, and of recognizing the call of the hour.

## **Main Points of Yaacov Medan's Explanation**

### *The Principle of Return*

The children of a Jewish father and a non-Jewish mother are considered thoroughly non-Jewish from the standpoint of the halakha, as regards their personal status and obligation to keep commandments. We therefore did not use the term “Jew”, which is also a halakhic term, in referring to them, preferring the more general term, “member of the Jewish people”, which is more fitting for the “seed of Israel”. We both agree that these individuals are eligible to immigrate according to the Law of Return (see clauses 1-4 of our proposal regarding the principle of return). I do not feel that even if they grew up with a Jewish identity and perhaps suffered on its account, willingly or unwillingly, that the Torah necessarily commands us to ignore their link to the Jewish people and the Land of Israel and to relate to them as total strangers.

Certainly it is appropriate to show them human solidarity. In the view of at least some rabbinic scholars it is our duty to try to draw to Judaism the children of a Jewish father and a non-Jewish mother, children who are connected to the seed of Israel.\* Furthermore, although Rabbi Moshe Feinstein considered the Ethiopian immigrants to be gentiles, he nevertheless supported the efforts to bring them to Israel and convert

them, due to their Jewish consciousness and their emotional identification with their Jewishness. So he writes in a letter to his grandson, Rabbi Mordechai Tendler, on the subject:

“One should know, that even if by law they are not Jewish, in any event, since they think they are Jewish, and risk their lives for the sake of their Jewishness, we are obligated to save them”.

Notwithstanding the above, it should be noted that some immigrants currently arriving in Israel lack all connection to Judaism, and are interested in joining the State of Israel only because the living conditions here are superior to the living conditions in their countries of origin – without any wish on their part for some link (however minimal) to Judaism. The principle of Return we have formulated will include “An individual who has joined the Jewish people”, but only if he has an authentic tie to Judaism.

I admit that I accepted this formulation with a heavy heart. From my vantage point, it is replete with pitfalls. But I became convinced that on the secular side there are many good people whose intention in legislating this clause was to take responsibility for their neighbors, those gentiles who consider themselves Jews, in the spirit of the responsibility displayed towards them by Rabbi Feinstein. Rabbi Feinstein did not address the case of those who join the Jewish people under the conditions we stipulated. But it is possible that we can bring them to Israel and convert them as well.

### *Registration of Religion*

Registration in the population registry is a formal matter conducted by clerks in accordance with the declaration of the person being registered. We have agreed that only the child of a Jewish mother or someone who has converted will be registered as belonging to the Jewish religion. Regarding the question of the character of the conversion, in my opinion it would not be in consonance with the aims of the covenant to take measures which the public is likely to view as excluding the Reform and Conservative from the Jewish people, along the lines of the Karaites, for example. The argument we have with these two movements is sharp and bitter, and it must be conducted in the proper arenas – respectfully, but aggressively and without compromising the pillars of our faith and the halakhic tradition.

Nevertheless, Reform and Conservative Jews are part of the Jewish people. To dismiss their conversions outright is correct from a halakhic standpoint. But to cancel them entirely from the population registry as well – after the Conservative and Reform movements agreed to conversions according to the halakha of the “Shulhan Arukh” in the manner proposed by the Ne’eman Committee, the Chief Rabbinate being the side who rejected the committee’s conclusions – would likely be considered an expulsion from the Jewish people. We therefore recommended registering those who converted in this manner as Jews in the population registry, with the identity of those who converted them recorded explicitly. We also decided that the population registry would be based on the declaration of the person being registered, which is to be grounded in verifiable facts, but that appearance of this information in the registry would not in itself be considered evidence of its validity (clause 1 of our proposal on the population registry and conversion).

It is imperative that the population registry be transparent. If the observant community cannot rely on it, they will be compelled to keep communal genealogical records. The result of such records is liable to be an irrevocable divide between the observant and their brothers. During the second Temple period as well, such books of lineage were an important factor in fomenting baseless hatred and the Temple’s subsequent destruction.

### *Registration of Nationality*

I preferred the term “the People of Israel” to “Jewish”. The expression “Jewish” comprises a description of the individual himself, and is a thoroughly halakhic term (clause 2 of our proposal regarding the population registry and conversion). “The People of Israel” is a more general expression, and I prefer to employ it rather than to eliminate the nationality category – which to my mind is unthinkable in a state that defines itself as the state of the Jewish people.

### *A Summary of My Position — The Cumulative Weight of Various Considerations*

With regard to the population registry, it was necessary to make painful concessions in order to salvage that which I deem essential.

The fact that it will be possible to register a gentile as a member of the Jewish religion on the basis of a Reform conversion, which goes against the Torah and Jewish law in effect since time immemorial, and that in many cases such conversions are performed without even a minimum of national responsibility – is quite intolerable to me. The considerations that brought me to assent to this proposal, which I enumerated above, may not each measure up independently. But it seems to me at least that some of them together have cumulative weight.

I will list these considerations again:

1. The chance of winning in the political arena or the courts is not good (in keeping with the decisions of the High Court, the current entry policy into Israel is more flexible than ever).
2. Instead of devoting superfluous energies to battles in these spheres, it appears to me to be far more crucial to win the battle for the heart of the “man on the street” who votes in the elections every few years. The voter will determine our ability to contain the damage: “Our deeds will draw them close – or our deeds will push them away”. The cultivation or alienation of the voter depends only on us.
3. The rabbinate openly and officially refused to accept the Ne’eman compromise regarding conversion, despite the fact that the joint conversion seminary is directed primarily by Jews faithful to the “Shulhan Arukh”. The rabbinate feared that such an acceptance would be construed as recognition of other streams. This state of affairs enabled (to my mind unjustifiably) the Reform and Conservative to argue that despite the establishment of the joint conversion seminary, they are not bound by the Ne’eman compromise, and they continue to demand recognition of their conversions. The resulting situation is liable to produce a stampede in the direction of the Reform and Conservative among prospective converts.
4. The power struggles taking place in the courts and the political arena often degenerate into personal animosities, which only detract from the ideological struggle. In the context of my public endeavors I have encountered figures from the Conservative and Reform movements from whom I can learn – and I certainly have no interest in attacking them personally. My spiritual struggle against what they represent is unrelenting, yet the Conservative and Reform streams belong to the Jewish people – and the uncompromising spiritual battle with them needs to be conducted in the sphere of public discourse, not in the courts or the political arena.
5. In my view, there is no question that the most important point is the proposed change in the Law of Return, which will prevent total gentiles from taking up residence here in Israel, as well as avoid mass-scale indiscriminate conversions by parties not committed to the “Shulhan Arukh”.

In conclusion: I am aware of the fact that from the perspective of the religiously observant the covenant's proposal is a regression from the existing law. However for some time now the situation on the ground has been as far removed from the law as East is from West. With regard to the situation in practice, the covenant effects a dramatic improvement. This in and of itself is preferable to me, especially given that it is part of a willingly undertaken joint agreement, that adheres to the spirit of the covenant as a whole.