

# **ACCESS TO CITIZENSHIP: IS ISRAEL VIOLATING INTERNATIONAL LAW BY DISCRIMINATING AGAINST NON-JEWISH ASYLUM SEEKERS AND BY LIMITING PALESTINIAN OPPORTUNITIES TO GAIN CITIZENSHIP IN ISRAEL?**

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## **Abstract**

My discussion proceeds in separate sections dealing with issues of access to citizenship in Israel. This note focuses on citizenship to Israel as a refugee and through the country's naturalization process. Initially, I will define the term refugee and what it means to be an immigrant, as defined by Israel and the international community. Next, I will examine the laws of Israel, as well as the laws of other nations, and establish the differences between an immigrant and a refugee. Then, I will evaluate Israeli immigration law, as well as refugee and asylum law, and compare it to international treaties signed by Israel to determine if Israel's practices and policies are in violation of international law. Finally, I will analyze Israel's procedures and compare them with other similarly situated countries to determine if they are procedurally fair or if it is common practice among other nations.

The purpose of this note is to determine whether Israel is fulfilling its obligations to its citizens, those seeking citizenship, and the international community. This note specifically addresses the policies, procedures and laws that Israel has in place to deal with Non-Jewish citizenship seekers, specifically those of African and Palestinian decent. Israel is home to one of the world's largest refugee populations, the Palestinian people. Furthermore, the mass influx of refugees from other distressed countries in the area has caused a significant problem in the way Israel handles asylum seekers' claims.

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## Introduction

This note requires some background information on the inception of Israel and some history of its laws. Israel is a country that, since its establishment, has dealt with numerous controversial situations. In 1917, during World War I, Great Britain issued the Balfour Declaration, which promised a Jewish national home in Palestine.<sup>2</sup> In 1948, the United Nations (“U.N.”) General Assembly Resolution 194 established three requirements. First, the Resolution established a conciliation commission and asserts that “refugees wishing to return to their homes and live at peace should be allowed to do so[,] [Second,] [] compensation should be paid to others[,] [Lastly,] that free access to the holy places should be assured.”<sup>3</sup> However, the violence continued.

In 1967, The U.N. Security Council Resolution 242 was passed.<sup>4</sup> Resolution 242, “confirm[s] the inadmissibility of the acquisition of land by force and calling for Israel’s withdrawal from occupied territories, the right of all states in the region to live in peace within secure and recognized borders, and a just solution to the refugee problem.”<sup>5</sup> In 1978, “[t]he Camp David Accords are approved by Israel . . . , confirming Israel’s compliance with . . . Resolution 242 . . . .”<sup>6</sup>

The displacement of more than 700,000 Palestinian civilians during the 1948 war has been depicted as “the original sin” of the Israeli State.<sup>7</sup> This displacement has continued to be problematic for the Israeli state to this day. It has been recently estimated that “there are about 9.4 million Palestinians, of whom 3.7 million live in the West Bank and Gaza, 200,000 in East Jerusalem, 1 million in Israel, and 4.5 million in other nations.”<sup>8</sup>

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<sup>2</sup> See JIMMY CARTER, PALESTINE PEACE NOT APARTHEID 59 (2006).

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Id.*; see also S.C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967), available at <http://unispal.un.org/unispal.nsf/0/7D35E1F729DF491C85256EE700686136>.

<sup>6</sup> CARTER, *supra* note 2, at 6.

<sup>7</sup> Riccardo Bocco, *UNRWA and the Palestinian Refugees: A History within History*, OXFORD JOURNAL, vol. 28, iss. 2-3, at 229, available at <http://rsq.oxfordjournals.org/content/28/2-3/229.full#fn-2>.

<sup>8</sup> CARTER, *supra* note 2, at 59.

The Palestinian-Israeli conflict has been ongoing since May 1948.<sup>9</sup> In 1967, “Israel executed a pre-emptive strike on Egypt . . . known as the 1967 Arab-Israeli War.”<sup>10</sup> “By the end of the war, Israel took control of the West Bank and other territories outside of the agreed upon Israeli borders . . .”<sup>11</sup> “Since the establishment of the state, Israel has relied upon these laws to ground their discriminatory treatment of Arab citizens and allow the unequal status and unequal treatment of Jewish and Arab citizens to persist.”<sup>12</sup> “For historical, legal, and political reasons, Palestinian refugees and stateless individuals have been effectively denied many of the minimal legal protections available to other refugees under the regime of the 1951 Geneva Convention Relating to the Status of Refugees.”<sup>13</sup> It has been said that, “some conceptions of Israel as a Jewish state compete tragically with democratic values.”<sup>14</sup> This leads to “Arabs . . . not given consideration[s] as citizens who matter.”<sup>15</sup>

Most people strongly condemn the excessive destruction and civilian casualties by Israel.<sup>16</sup> During most conflicts, the number of Arab casualties has been three or four times greater than Israeli casualties.<sup>17</sup> Furthermore, since Israel’s weaponry is supplied by the

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<sup>9</sup> Negar Katirai, *History of the Israeli-Palestinian Conflict, Point of View*, PUB. BROADCAST SERVICE (Dec. 2001), <http://www.pbs.org/pov/pdf/promiese/promises-timeline.pdf>.

<sup>10</sup> Oranet Orevi, *A Holistic Approach to the Conflict of Israel and Palestine: Where We Are Now and Where We Can Go*, 19 ANN. SURV. INT’L & COMP. L. 105, 108 (2013); *see id.* at 3.

<sup>11</sup> Orevi, *supra* note 10.

<sup>12</sup> *Discriminatory Laws*, ADALAH (June 2013) <http://adalah.org/eng/Articles/1771/Discriminatory-Laws>.

<sup>13</sup> Susan M. Akram & Terry Rempel, *Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees*, 22 B.U. INT’L L.J. 1, 3 (2004).

<sup>14</sup> STEVEN V. MAZIE, *ISRAEL’S HIGHER LAW: RELIGION AND LIBERAL DEMOCRACY IN THE JEWISH STATE*, 220 (2006).

<sup>15</sup> *Id.* at 219.

<sup>16</sup> CARTER, *supra* note 2, at 17.

<sup>17</sup> *Id.* at 67.

United States, the United States has imposed requirements that the armaments sold to Israel be used only for Israeli defense against attack and not preemptive strikes or invasions.<sup>18</sup> “[O]n average, twelve innocent families lost their homes for every person accused of participation in attacks against Israelis.”<sup>19</sup> Many believe that “Palestinian human rights must be protected as generally recognized under international law, including self-determination, free speech, equal treatment of all persons, freedom from prolonged military domination and imprisonment without trial, the right of families to be reunited, [and] the sanctity of ownership of property . . . .”<sup>20</sup>

Israel has recently begun passing legislation that is aimed at reducing the number of asylum seekers crossing its borders and seeking refuge. Israel had passed, “legislation allowing authorities to hold illegal immigrants in detention facilities for up to three years without trial, and making aid to them, including employment, a criminal offense punishable by fines and even prison time.”<sup>21</sup> These types of legislation are meant to deal with the recent influx of African asylum seekers.<sup>22</sup> “This [law] is not unusual, although harsh. Australia, for example, also holds asylum seekers in detention for long periods, although it is retreating from that policy because of the growing evidence that it produces serious mental harm.”<sup>23</sup>

The Israeli Supreme Court has since declared the law unconstitutional, but other laws with similar aims are still in effect today.<sup>24</sup> Justice Edna Arbel, of the Israeli Supreme Court, was quoted saying, “I would like to believe that the state will find a way to deal with the situation with the means at its disposal, so as to relieve the

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<sup>18</sup> *See id.* at 44.

<sup>19</sup> *Id.* at 116.

<sup>20</sup> *Id.* at 18.

<sup>21</sup> Batsheva Sobelman, *Israeli High Court Upholds Controversial Citizenship*, L.A. TIMES (Jan. 12, 2012, 2:45AM), [http://latimesblogs.latimes.com/world\\_now/2012/01/israel-passes-laws-restricting-arabs-asylum-seekers.html](http://latimesblogs.latimes.com/world_now/2012/01/israel-passes-laws-restricting-arabs-asylum-seekers.html).

<sup>22</sup> *Id.*

<sup>23</sup> Paul Canning, *Israel Passes Harsh Immigration Law*, CARE2.COM (Jan. 10, 2012, 8:30 PM), <http://www.care2.com/causes/israel-passes-harsh-immigration-law-video.html>.

<sup>24</sup> Barak Ravid and Ilan Lior, *Court Invalidates Legislation Allowing Israel to Detain Migrants Without Trial*, HAARETZ (Sept. 16, 2013), <http://oppenheimer.mcgill.ca/Court-invalidates-legislation>.

stress of local residents.”<sup>25</sup> The Interior Minister, Gideon Sa’ar, declared that Israel would continue to formulate a new alternative legislative arrangement.<sup>26</sup> Israel is determined to create legislation that would reduce the influx of asylum seekers.

Under the 1951 United Nations Convention Relating to the Status of Refugees (“the 1951 Convention” or “Convention”) and the 1967 Protocol Relating to the Status of Refugees (“1967 Protocol” or “Protocol”), “Israel is forbidden to return refugees to dangerous situations without allowing them to have their legal claim for asylum heard and evaluated.”<sup>27</sup> It has been alleged that Israel has returned asylum seekers to the dangerous situations from which they fled, without allowing them the opportunity to have their legal claim for asylum heard and evaluated, in violation of the Convention and Protocol.<sup>28</sup> This is typically called “[h]ot return[s] [and] implies [an] immediate refoulement of asylum-seekers after they have crossed the border . . . in contravention of the . . . Convention.”<sup>29</sup> “Several NGO’s filed a plea with the Supreme Court following the ‘hot returns’ of August 2008, asking the court to order [Israeli Defense Force] to stop the process, yet the plea is still pending . . . .”<sup>30</sup> Coincidentally, “the background to the drafting of the 1951 Convention was, to a large extent, the experience of the Jews in Europe prior to and during the Second World War.”<sup>31</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *See id.*

<sup>27</sup> Joshua Bloom, Op-Ed., *Israel Welcomes All Seeking Refuge, But Only if They’re Jewish*, THE JERUSALEM POST (Sep. 9, 2013, 9:51 PM), <http://www.jpost.com/Opinion/Op-Ed-Contributors/Israel-welcomes-all-seeking-refuge-but-only-if-theyre-Jewish-325660>.

<sup>28</sup> *See id.*

<sup>29</sup> *Israel: Refugees, Asylum-Seekers and Protection - Analysis*, IRINNEWS.ORG, (July 2, 2009), <http://www.irinnews.org/report/85099/israel-refugees-asylum-seekers-and.-protection-analysis>.

<sup>30</sup> *Id.*

<sup>31</sup> Robbie Sabel, *Book Review: The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol: A Commentary*, 45 ISR. L. REV. 555, 556 (2012) (book review).

Furthermore, the Israeli Supreme Court has ruled that Palestinians will not be able to acquire Israeli citizenship through marriage.<sup>32</sup> The Israeli law dates to 1952, when the four-year-old state passed the statute defining the gateways to citizenship as birth in the country, immigration under the Law of Return, residence and naturalization.<sup>33</sup> The last option included marriage to an Israeli citizen.<sup>34</sup> In 2003, an amendment to the Citizenship and Entry into Israel Law largely excluded Palestinians from the different ways of obtaining citizenship.<sup>35</sup>

On January 11, 2012, the [Israeli] high court upheld the constitutionality of the Citizenship and Entry into Israel Law, which bans the entry of Palestinians from the West Bank and Gaza, Syria, Lebanon, Iran, Iraq, and any area in which operations that constitute a threat to the State of Israel are being carried out for the purpose of family unification with their Israeli spouses.<sup>36</sup>

“The law primarily affects Palestinian citizens of Israel and their non-citizen Palestinian spouses.”<sup>37</sup> “The purpose of the bill is to establish a clearer, institutionalized immigration policy for the State of Israel which ensures its existence as a ‘Jewish and democratic state’.”<sup>38</sup>

Also, the amendment calls for “Non-Jews seeking to become citizens to pledge loyalty to Israel as a Jewish and a democratic

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<sup>32</sup> Sobelman, *supra* note 21; The State of Israel, The Citizenship into Israel Law 5763-2003 (Mar. 2013), [http://www.knesset.gov.il/laws/special/eng/citizenship\\_law.htm](http://www.knesset.gov.il/laws/special/eng/citizenship_law.htm).

<sup>33</sup> Sobelman, *supra* note 21.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Israel: High Court Rulings Undermine Human Rights*, HUMAN RIGHTS WATCH (Jan. 20, 2012), <http://www.hrw.org/news/2012/01/30/israel-high-court-rulings-undermine-human-rights>.

<sup>37</sup> *Id.*

<sup>38</sup> *Adalah: Index of Currently Pending Discriminatory Bills in the 19<sup>th</sup> Israeli Knesset*, THE LEGAL CENTER FOR ARAB MINORITY RIGHTS IN ISRAEL (June 24, 2013), <http://adalah.org/Public/files/Discriminatory-Laws-Database/Discriminatory-Bills-19th-Knesset-24-06-2013.pdf>.

state.”<sup>39</sup> However, this amendment “does not apply to Jews or those of Jewish descent . . . .”<sup>40</sup> A critic says, “it pokes an unnecessary finger in the eye of the Arab minority” and “[t]he message it sends to the Arab minority is that they are second-, third- and fourth-class citizens.”<sup>41</sup> Some question whether a state can be both Jewish and democratic when one in five citizens is not Jewish and a large number of Jews consider themselves secular.<sup>42</sup>

Moreover, the right to seek and enjoy asylum from persecution is maintained in Article 14 of the Universal Declaration of Human Rights.<sup>43</sup> “Human rights law prohibits arbitrary detention and requires that detention must be in accord with procedures established by law,”<sup>44</sup> including Article 9 of the Covenant on Civil and Political Rights.<sup>45</sup> “Article 31(2) of the Refugee Convention limits ‘restrictions’ on the movements of refugees who enter territories illegally to ‘those which are necessary’.”<sup>46</sup> The Executive Committee Conclusion 44 of 1986 set forth the agreed standards for detention of refugees and

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<sup>39</sup> Isabel Kershner, *Israeli Cabinet Approves Citizenship Amendment*, N.Y. TIMES, Oct. 15, 2010, available at [http://www.nytimes.com/2010/10/11/world/middleeast/11mideast.html?\\_r=1&](http://www.nytimes.com/2010/10/11/world/middleeast/11mideast.html?_r=1&).

<sup>40</sup> *Id.*

<sup>41</sup> Edmund Sanders & Batsheva Sobelman, *Israel's Cabinet Approves Controversial Loyalty Oath*, L.A. TIMES (Oct. 11, 2010), available at <http://articles.latimes.com/2010/oct/11/world/la-fg-1011-israel-loyalty-oath-20101011>.

<sup>42</sup> *Id.*

<sup>43</sup> Bill Frelick, *U.S. Detention of Asylum Seekers and Human Rights*, THE ONLINE J. OF THE MIGRATION POLY ISSUE (Mar. 1, 2005), available at <http://www.migrationpolicy.org/article/us-detention-asylum-seekers-and-human-rights>; see also Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc., A/RES/217(III) (Dec. 10, 1948).

<sup>44</sup> Frelick, *supra* note 43; see also International Covenant on Civil and Political Rights, G.A. Res. 2200 A (XXI), U.N. Doc. A/RES/2200 A(XXI) (Dec. 16, 1966).

<sup>45</sup> Frelick, *supra* note 43.

<sup>46</sup> *Id.*

asylum seekers.<sup>47</sup> Generally, detention should be avoided and only used in limited circumstances, such as

on grounds prescribed by law to verify identity; to determine the elements of which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order.<sup>48</sup>

## I. Asylum Seekers

“Israel does not have a refugee law; however, regulations can allow asylum-seekers to work, and grant temporary protection and non-refoulement.”<sup>49</sup> This stems from a commitment not to force people back to where they came from. The Convention defines refugee in Article 1(A)(2) as:

[]any person who as a result of events occurring before January 1 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.<sup>50</sup>

The Protocol was drafted to eliminate the problem of the dateline altogether.<sup>51</sup> The Protocol defines refugee as:

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Israel: Refugees, Asylum-Seekers and Protection - Analysis, supra* note 28.

<sup>50</sup> G.A. Res. 2198 (XXI), U.N. Doc. A/RES/2198(XXI) (July 28, 1951).

<sup>51</sup> DAVID A. MARTIN ET AL., *FORCED MIGRATION LAW AND POLICY*, 58 (2d ed. 2013).



[]any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and..." and the words "...as a result of such events", in article 1 A (2) were omitted.<sup>52</sup>

Together, the Convention and Protocol define a refugee as "including any person who is outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion."<sup>53</sup> Israel signed the 1951 Convention on the Status of Refugees in 1954, and the 1967 Protocol in 1968.<sup>54</sup>

"The 1951 Convention embodies two categories of rights granted to refugees: the right of non-refoulement—that is, the fundamental right of non-return to a persecuting state—and an enumerated list of civil, political and social rights to which they are entitled while they are in the state to which they fled."<sup>55</sup> Furthermore, it has been determined that "the minimum international requirement is that all persons should have access to a fair and effective procedure for the determination of his or her claim."<sup>56</sup> In addition to non-refoulement, the 1951 Convention also sets out a list of human rights that must be granted to refugees and in some cases to applicants for refugee status.<sup>57</sup> Applicants for refugee status are entitled to remain in the territory of the state concerned until their application has been

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<sup>52</sup> G.A. Res. 2198 (XXI), *supra* note 49.

<sup>53</sup> Guy S. Goodwin-Gill, *Introductory Note, Convention relating to the Status of Refugees & Protocol relating to the Status of Refugees*, AUDIOVISUAL LIBRARY OF INTERNATIONAL LAW, <http://legal.un.org/avl/ha/prsr/prsr.html> (last visited Oct. 4, 2014).

<sup>54</sup> UNHCR *Israel Fact Sheet*, UNHCR (June 2010), <http://www.unhcr.org/4c9084a89.html>.

<sup>55</sup> Sabel, *supra* note 31, at 557.

<sup>56</sup> *Id.* at 560.

<sup>57</sup> *Id.* at 565.

decided.<sup>58</sup> Technically, Article 33 only mandates non return; it does not require states to provide work authorization or residence permits to those who fall within its ambit.<sup>59</sup>

In an American case, *INS v. Cardoza-Fonseca*, the court determined that Article 33.1 does not extend this right to everyone who meets the definition of refugee.<sup>60</sup> The Court then determined that Article 33.1 requires an applicant to satisfy two burdens: “first, that he or she be a ‘refugee,’ i.e., prove at least a ‘well-founded fear of persecution’; second, that the ‘refugee’ show that his or her life or freedom ‘would be threatened’ if deported.”<sup>61</sup>

The Convention and Protocol do not regard detention of applicants as a violation of their right to remain in the state until their status is determined.<sup>62</sup> There is “a widespread practice among States either to detain applicants for asylum ... or to assign them to special facilities ... which they may not leave during part, or the entire, examination procedure.”<sup>63</sup> “The conditions of detention, however, must be adequate in accordance with accepted standards of human rights.”<sup>64</sup>

There are certain exceptions to countries granting asylum or withholding of removal. States are not obliged to afford non-refoulement protection to a subset of refugees deemed dangerous.<sup>65</sup> The definition of refugee was intended to exclude “‘internally displaced refugees[,]’ ‘migrants of purely economic or personal convenience[,]’ ‘accidental victims of natural disasters and environmental problems[,]’ or persons who were stateless or fleeing a ‘violent society’ but were not subject to discriminatory persecution.”<sup>66</sup>

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<sup>58</sup> *Id.* at 561.

<sup>59</sup> MARTIN, *supra* note 51, at 88.

<sup>60</sup> See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440-41 (1987).

<sup>61</sup> *Id.*

<sup>62</sup> Sabel, *supra* note 31, at 561.

<sup>63</sup> *Id.* (quoting Rainer Hofman & Tillman Löhr, *Introduction to Chapter V, in THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL: A COMMENTARY* (Andreas Zimmermann ed., Oxford University Press 2011)).

<sup>64</sup> *Id.*

<sup>65</sup> MARTIN, *supra* note 51, at 57.

<sup>66</sup> Sabel, *supra* note 31, at 557-558 (quoting Terje Einarsen, *Drafting History of the 1951 Convention and the 1967 Protocol, in THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL: A COMMENTARY* (Andreas Zimmermann ed., Oxford University Press 2011)).

Furthermore, persecution by non-state actors may be considered to be persecution for the purposes of the 1951 Convention “if ‘the state concerned fails to protect the victim’.”<sup>67</sup> “Persons who have committed crimes against peace, war crimes, crimes against humanity or ‘serious non-political crimes’ are not entitled to refugee status.”<sup>68</sup>

Article 34 of the Convention states that “[t]he Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees.”<sup>69</sup> “They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.”<sup>70</sup>

States “have the right to control . . . the entry, residence and expulsion of aliens” subject to their treaty obligations.<sup>71</sup> “[T]he restrictions imposed by the 1951 Convention have received universal acceptance, though not necessarily universal compliance.”<sup>72</sup> States retain discretion under the Convention to bestow or withhold both lawful status and residence rights.<sup>73</sup> The purpose of the Convention is to

provide protection by creating an obligation for the contracting parties to ensure that individuals within their jurisdiction are not turned back to countries where they would be exposed to the risk of persecution on the basis of either race, religion, nationality, membership of a particular social group or political opinion.<sup>74</sup>

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<sup>67</sup> *Id.* at 559.

<sup>68</sup> *Id.*

<sup>69</sup> G.A. Res. 2198 (XXI), *supra* note 50.

<sup>70</sup> *Id.*; *see also* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>.

<sup>71</sup> Sabel, *supra* note 30, at 555.

<sup>72</sup> *Id.*

<sup>73</sup> MARTIN, *supra* note 51, at 52.

<sup>74</sup> Sabel, *supra* note 31, at 555.

It is reasonable that the "application of the 1951 Convention is carried out by the courts in different countries and there will inevitably be different interpretations."<sup>75</sup> Therefore, it is possible that a person, who is recognized as a refugee in one country, may not be considered as a refugee in another. However, parties to the Convention and Protocol should not have differing definitions of a refugee. Therefore, the definition of a refugee is not a linguistic issue, but rather a procedural issue.

Many countries try and avoid the difficult decisions associated with refugee policies because it is a sensitive issue and a wrong decision can have global consequences. As previously stated, many countries detain refugees while the process is ongoing.<sup>76</sup> This trend seems to be losing support, as many countries seem to be retreating from this policy based on the mental health concerns of the refugee's.<sup>77</sup> However, other countries, such as Kenya, have taken a more definite stance on the detention of refugee applicants.<sup>78</sup> The Kenyan court ruled that detaining asylum seekers in refugee camps was illegal.<sup>79</sup> "The court based its decision on Article 26 of the Convention Relating to the Status of Refugees, which guarantees freedom of movement for asylum seekers; it ruled that their confinement in refugee camps violates the convention and Kenya's own laws."<sup>80</sup> The court also determined that "forcibly transferring asylum seekers to refugee camps" is likely to have a chilling effect and encourage them to return to the country that they seek to escape.<sup>81</sup> "Encouraging 'voluntary repatriation' by Kenyan authorities, ruled the High Court, constitutes a violation of the basic principle of non-refoulement, established in the Refugee Conventions."<sup>82</sup>

In the United States, "the Refugee Act of 1980 essentially adopted the international definition of refugee found in the 1951

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<sup>75</sup> *Id.* at 559.

<sup>76</sup> See Canning, *supra* note 23.

<sup>77</sup> See *id.*

<sup>78</sup> Laissez Passer, *Would Israel's Refugee Policies Stand up in . . . Nairobi?*, +972 MAGAZINE, (Aug. 11, 2013), <http://972mag.com/would-israels-refugee-policies-stand-up-in-nairobi/77314/>.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

Convention and 1967 Protocol . . . .”<sup>83</sup> The Refugee Act further “gave the Attorney General the discretion to grant asylum according to procedures that he would establish.”<sup>84</sup> The United Nations High Commissioner for Refugees (“UNHCR”) Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers represent how UNHCR believes asylum seekers should be treated.<sup>85</sup> This, however, is not binding law.<sup>86</sup> The guidelines “contemplate circumstances in which detention of asylum seekers are necessary,” but nevertheless consider it “inherently undesirable[.]”<sup>87</sup> These circumstances are similar to the Executive Committee Conclusion 44 stated above.

“The Palestinian refugees were explicitly excluded from the ambit of the 1951 Convention as the ‘Convention shall not apply to persons who are at present receiving from organs or agencies of the UN other than the UNHCR protection or assistance.’”<sup>88</sup> Palestinian refugees have been singled out in the Convention and a different and separate analysis based on Article 1D applies in the determination of their status when they seek asylum in third world countries.<sup>89</sup> This was done so that Palestinians, who had been considered refugees under Article 1A the 1951 Convention, received the full benefits of their refugee status under the Convention.<sup>90</sup> “Thus, the refugee status determination process by national authorities in cases involving Palestinian refugees should be based on Article 1D and not on Article

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<sup>83</sup> Frelick, *supra* note 43.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Sabel, *supra* note 31 at 563; *see also* G.A. Res. 2198 (XXI), *supra* note 50, Art. I(D).

<sup>89</sup> Susan Akram & Mike Kagan, *Palestinians Who Fall Under the 1951 Convention*, FAHAMU REFUGEE PROGRAMME, <http://www.refugeelaidinformation.org/palestinians-who-fall-under-1951-convention> (last visited Nov, 18, 2014).

<sup>90</sup> *Id.*

1A of the 1951 Convention.”<sup>91</sup> Therefore, the UNHCR explained in its Revised Note (paragraph 9(b)): “[i]n the case of persons falling within paragraph 2 of Article 1D, no separate determination of well-founded fear under Article 1A(2) of the 1951 Convention is required to establish that such persons are entitled to the benefits of that Convention.”<sup>92</sup>

Article 1D was written into the Convention so that the international community, as well as national authorities, recognized Palestinians as refugees from Israel.<sup>93</sup> “Israel is[,] therefore[,] to be considered the putative state of persecution in a claim to refugee status submitted by Palestinians under Article 1D.”<sup>94</sup> Unfortunately, most national authorities have yet to implement the above interpretation of Article 1D.<sup>95</sup>

The United Nations Relief and Works Agency govern Palestinian refugees for Palestinian Refugees (UNRWA).<sup>96</sup> This is an agency that is dedicated to the relief of Palestinian refugees.<sup>97</sup> “UNRWA defines Palestinian refugees as those people, and their descendants, who lived in Palestine two years prior to the 1948 hostilities and who lost their homes and livelihoods as a consequence of the conflict.”<sup>98</sup> The UNRWA is not, however, an agency that is focused on ending the hostility between the Palestinian people and Israel.<sup>99</sup> Instead, UNRWA is a humanitarian agency that focuses on facilitating aid to Palestinian refugees.<sup>100</sup> “The Agency is the only international organization set up to face a specific refugee problem in a specific geographical area.”<sup>101</sup>

Israel has had a history of implementing its beliefs by using statutes that had not originally been intended for those purposes, even against its own secular population.<sup>102</sup> In cases dealing with pigs being

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> Akram & Kagan, *supra* note 89.

<sup>96</sup> MARTIN, *supra* note 51, at 7.

<sup>97</sup> *Id.* at 50.

<sup>98</sup> *Id.*

<sup>99</sup> See Bocco, *supra* note 7.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> DAPHNE BARAK-EREZ, OUTLAWED PIGS: LAW, RELIGION, AND CULTURE IN ISRAEL 45 (2007).

raised in Israel, municipalities began resorting to administrative powers that had not originally been instated for the purpose of outlawing pig farming.<sup>103</sup> It has been said that “[i]f the legal system is willing to make room for such feelings, it is also obligated to take into consideration the feelings of others, including the secularists’ objections to religious coercion.”<sup>104</sup> Even with statutes that appear to be unbiased, such laws usually contain a paragraph stating that “their provisions will not affect any laws or regulations enacted in the past.”<sup>105</sup> Additionally, Israel also has a history of not complying with regulations or treaties. For example, in 1991 Israel refused to halt its construction activity in the occupied territories until the United States threatened to withhold a portion of the \$10 million daily aid package.<sup>106</sup> The world’s frustration with Israel’s refusal to comply with international law can be seen in the wording of U.N. Resolution 465, which states that the Security Council “[s]trongly deplor[es] the refusal by Israel to co-operate with the Commission and regret[s] its formal rejection of resolutions . . . .”<sup>107</sup>

Tony Judt, a British historian and author of *ISRAEL: THE ALTERNATIVE*, declared the State of Israel an “anachronism.”<sup>108</sup> He stated that, “the very idea of a Jewish state—a state in which Jews and the Jewish religion have exclusive privileges from which Non-Jewish

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<sup>103</sup> *Id.* at 47.

<sup>104</sup> *Id.* at 113.

<sup>105</sup> Israel Shahak, *Israeli Discrimination Against Non-Jews Is Carefully Codified in State of Israel's Laws*, WASHINGTON REPORT ON MIDDLE EAST AFFAIRS, Jan./Feb. 1998, at 88, available at <http://www.wrmea.org/wrmea-archives/191-washington-report-archives-1994-1999/january-february-1998/12037-other-voices-israeli-discrimination-against-non-jews-is-carefully-codified-in-state-of-israel-s-laws.html>.

<sup>106</sup> CARTER, *supra* note 2, at 132.

<sup>107</sup> S.C. Res. 465, U.N. Doc. S/RES/465 (Mar. 1, 1980), available at <http://unispal.un.org/UNISPAL.NSF/0/5AA254A1C8F8B1CB852560E50075D7D5> (emphasis omitted).

<sup>108</sup> Tony Judt, *Israel: The Alternative*, THE N.Y. REV. OF BOOKS, Oct. 23, 2003, available at <http://www.nybooks.com/articles/archives/2003/oct/23/israel-the-alternative/>.

citizens are forever excluded—is rooted in another time and place.”<sup>109</sup> It has been contended that Israel is not a liberal democracy but an ethnic democracy, one that serves a core ethnic nation through democratic institutions but provides something short of full membership to those outside the nation.<sup>110</sup> It has been said that when Israeli’s are talking about democracy, regardless of whether they are proponents or opponents of the idea, they are talking about a kind of liberalism.<sup>111</sup>

## II. Immigration

There is no clear definition of an immigrant. Most countries define immigrants in different ways. For example, in the United States an immigrant is defined as “[a]n alien admitted to the United States as a lawful permanent resident. Permanent residents are also commonly referred to as immigrants; however, the Immigration and Nationality Act (“INA”) broadly defines an immigrant as any alien in the United States, except one legally admitted under specific nonimmigrant categories.”<sup>112</sup>

As with refugees, a country under the INA is not required to admit an alien as a permanent resident.<sup>113</sup> However, under international nationality law, “[a] state’s duty to respect the sovereignty of other states and their sovereign right to decide on the admission of foreigners implies a duty to accept a responsibility for a state’s own citizens including an obligation to allow their return.”<sup>114</sup> In other words, a state can control the naturalization process, but it cannot refuse to accept its own citizens in good status. In the United

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<sup>109</sup> MAZIE, *supra* note 14, at xvii.

<sup>110</sup> See Sammy Smooha, *Democracy: Israel as an Archetype*, in 2 ISRAEL STUDIES 198-241 (1997); see also As’ad Ghanem, Nadim Rouhana & Oren Yiftachel, *Questioning Ethnic Democracy: A Response to Sammy Smooha*, in 3 ISRAEL STUDIES 253-67 (1998).

<sup>111</sup> MAZIE, *supra* note 14, at 94. *f*sup

<sup>112</sup> *Definition of Terms*, HOMELAND SECURITY (Jul. 24, 2012), <https://www.dhs.gov/definition-terms#15>.

<sup>113</sup> *Id.*

<sup>114</sup> Kay Halibronner, *Nationality in Public International Law and European Law*, in 1 ACQUISITION AND LOSS OF NATIONALITY: POLICIES AND TRENDS IN 15 EUROPEAN COUNTRIES 35, 46 (Rainer Bauböck ed., 2006).



States, as most countries, “Congress has complete authority over immigration.”<sup>115</sup>

Israel has four methods of establishing citizenship.<sup>116</sup> The first is by the Law of Return, which is discussed in further detail below.<sup>117</sup> The remaining three methods are by residence, birth, and naturalization, also discussed in further detail below.<sup>118</sup> Under the existing Israeli immigration laws, a Non-Jew is not entitled to the Law of Return and cannot obtain citizenship through this avenue.<sup>119</sup> The remaining three methods are highly regulated and difficult to obtain for those who are not part of the Jewish faith.<sup>120</sup> The right to citizenship by birth is known as *jus soli* (right of soil).<sup>121</sup> However, Israel has not adopted this principle.<sup>122</sup> “Children born in Israel to non-Israeli parents do not acquire citizenship at birth.”<sup>123</sup> Recently, these methods have fallen under intense scrutiny for their racial and religious favoritism.<sup>124</sup>

“Israeli immigration and citizenship law is composed of two major legislative acts: the Law of Return (enacted in 1950, amended in 1970) and the Citizenship Law (enacted in 1952, amended in 1980).”<sup>125</sup> According to Israel's Central Bureau of Statistics, the Arab population in 2013 was estimated at 1,658,000, representing 20.7

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<sup>115</sup> *Immigration*, LEGAL INFORMATION INSTITUTE, <http://www.law.cornell.edu/wex/immigration> (last visited Oct. 8, 2014).

<sup>116</sup> See Ayelet Shachar, *Whose Republic?: Citizenship and Membership in the Israeli Polity*, 13 GEO. IMMIGR. L.J. 233, 239-40 (1999).

<sup>117</sup> *Id.* at 240.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 268.

<sup>122</sup> Shachar, *supra* note 116, at 268.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 239-40.

percent of the country's population.<sup>126</sup> The new Citizenship and Entry into Israel law has almost eliminated nearly all avenues for the Palestinian people to obtain citizenship in Israel and is one of the major focuses of this note.

Israel does not have a “formal constitution but it does have constitutional laws” called the Basic Laws.<sup>127</sup> “The Basic Law: Human Dignity and Liberty stipulates that there shall be no violation of the life, body, or dignity or any person as such, no violation of the property of a person” and “no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or otherwise.”<sup>128</sup> Furthermore, Israel’s Law of Return, originally passed on July 5, 1950, gives “every Jew in the world the right to settle in Israel.”<sup>129</sup> “This right to return is non-selective” and provides automatic citizenship to every Jew in Israel.<sup>130</sup> The state is unable to restrict the number of Jewish immigrants who arrive in Israel.<sup>131</sup> Therefore, one of the deciding factors in Israel’s immigration policy is religion—something that is unusual for a democratic society.

“One of the major goals of the Law of Return is to ensure a Jewish majority in Israel.”<sup>132</sup> Another goal of The Law of Return is to compete with the high Arab birth rate.<sup>133</sup> “Many pro-Palestinian advocates criticize the Law of Return as discriminatory, because Israel does not grant a similar right of return to Palestinian refugees who wish to return to their former homes in Israel, after being displaced in

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<sup>126</sup> 65<sup>th</sup> Independence Day – More than 8 Million Residents in the State of Israel, ISRAEL CENTRAL BUREAU OF STATISTICS (Apr. 14, 2013), [http://www.cbs.gov.il/hodaot2013n/11\\_13\\_097e.pdf](http://www.cbs.gov.il/hodaot2013n/11_13_097e.pdf).

<sup>127</sup> Amnon Rubinstein, *Israel's Partial Constitution: The Basic Laws*, JEWISH VIRTUAL LIBRARY (April 2009), <http://www.jewishvirtuallibrary.org/jsource/isdf/text/Rubinstein.pdf>.

<sup>128</sup> MAZIE, *supra* note 14, at 34-35.

<sup>129</sup> *Israel's Basic Laws: The Law of Return*, JEWISH VIRTUAL LIBRARY (July 5, 1950), [https://www.jewishvirtuallibrary.org/jsource/Politics/Other\\_Law\\_Law\\_of\\_Return.html](https://www.jewishvirtuallibrary.org/jsource/Politics/Other_Law_Law_of_Return.html).

<sup>130</sup> Shachar, *supra* note 116, at 240.

<sup>131</sup> *Id.*

<sup>132</sup> Rachael Gelfman Schultz, *The Law of Return: An Immigration Policy to Ensure a Jewish Majority in the State of Israel*, MY JEWISH LEARNING, [http://www.myjewishlearning.com/israel/History/1948-1967/Building\\_the\\_State/law-of-return.shtml](http://www.myjewishlearning.com/israel/History/1948-1967/Building_the_State/law-of-return.shtml) (last visited Oct. 8, 2014).

<sup>133</sup> *See id.*

the 1948 War of Independence and the 1967 Six-Day War.”<sup>134</sup> “Given the current political climate, the Law of Return, designed to be an inclusive law aimed at Jews, now also appears to be an exclusive law effectively excluding Non-Jews.”<sup>135</sup> An Arab citizen must have acquired citizenship status by way of residence, birth, or naturalization before the new Citizenship and Entry into Israel law was passed.<sup>136</sup> This law has effectively eliminated, or at least hindered, two of the only methods a Palestinian could obtain citizenship in Israel.

Since the creation of the State of Israel, the Palestinian people have tried to return to their former land and reclaim their alleged former homes. In December of 1948 the U.N. adopted Resolution 194, which resolved:

that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.<sup>137</sup>

The resolution identifies “three distinct rights that Palestinian refugees are entitled to exercise under international law—return , restitution and compensation.”<sup>138</sup> “Although much of the international

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<sup>134</sup> *Id.*

<sup>135</sup> Shachar, *supra* note 116, at 235.

<sup>136</sup> *Id.* at 237.

<sup>137</sup> G.A. Res. 194 (III), ¶ 11, U.N. Doc. A/RES/194 (Dec. 11, 1948), *available at* <http://unispal.un.org/UNISPAL.NSF/0/C758572B78D1CD0085256BCF0077E51A>.

<sup>138</sup> Badil, *Palestinian Refugees and the Right of Return in International Law*, 9 PALESTINE-ISRAEL JOURNAL OF POLITICS, ECONOMICS AND CULTURE (2002), *available at* <http://www.pij.org/details.php?id=145>.

community, including President Harry Truman, insisted in 1948 and 1949 that the repatriation of the Palestinian refugees was essential if the Arab-Israeli conflict was to be resolved, Israel refused to accept the principle of return for the Palestinians.”<sup>139</sup> “Israel has never showed any flexibility on this issue.”<sup>140</sup>

In the eyes of the 1952 Israeli Citizenship Law, “any Palestinian who discontinued his or her residency in Israel after the establishment of the state lost his or her entitlement to automatic Israeli citizenship by right of residence.”<sup>141</sup> “Many Palestinian Arabs found it difficult to prove that they had met the stringent conditions laid down in section 3 of the 1952 Citizenship Law, and, as a result, were denied Israeli citizenship status.”<sup>142</sup> “During the 1950s, the Supreme Court rarely overruled administrative decisions that denied Arabs’ requests to be registered as residents or as citizens, even if these persons had been illegally deported from Israel and had later managed to return to their homes.”<sup>143</sup>

The amendment to the Citizenship and Entry into Israel law prevented Palestinians from obtaining citizenship in different ways. “Officials said that when first passed, the move was aimed at blocking what the Palestinians call the right of return.”<sup>144</sup> “Later, supporters of the law cited security reasons, saying Palestinians who became Israeli citizens through marriage had become involved in suicide bombings by abusing the freedom of movement that the law afforded.”<sup>145</sup> No matter the justification for the amendment, one thing remains perfectly clear, that it is difficult for a Non-Jew to obtain citizenship in Israel. “Jewish citizens received preferential treatment over Non-Jewish citizens in matters where citizenship and marriage converged.”<sup>146</sup>

By way of example, if an alien were to marry a Jewish citizen of Israel, then the alien spouse was automatically entitled to Israeli

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<sup>139</sup> MUHAMMAD MUSLIH ET AL., *THE MIDDLE EAST IN 2015* 104 (Judith S. Yaphe ed., National University Press 2002) (1999).

<sup>140</sup> *Id.*

<sup>141</sup> Shachar, *supra* note 116, at 249.

<sup>142</sup> *Id.* at 250.

<sup>143</sup> *Id.*

<sup>144</sup> Sobelman, *supra* note 21.

<sup>145</sup> *Id.*

<sup>146</sup> Shachar, *supra* note 116, at 255.

citizenship.<sup>147</sup> Conversely, if an alien were to marry a Non-Jewish citizen of Israel, he or she could not use the law of return and would instead need to seek Israeli citizenship by way of naturalization.<sup>148</sup> Therefore, the laws clearly favor Jewish Israeli citizens over Non-Jewish Israeli citizens, even though both are citizens. The emphasis is placed on the religion of the citizen and the procedures become simpler if the citizen is part of the Jewish faith.

### III. Difference Between an Immigrant and an Asylum Seeker

There are several differences between an immigrant and a refugee. However, there are some basic similarities. For example, both an immigrant and an asylum seeker are those who are trying to gain citizenship to a country that is not their place of origin.<sup>149</sup> Furthermore, once granted status, the applicant becomes a citizen or has the ability to become a citizen in the future.<sup>150</sup> Finally, once a citizen through asylum or naturalization, the applicant can petition for immediate family members to resettle in the United States.<sup>151</sup> In other words, the applicant has the ability to apply for family reunification.

There are numerous reasons for individuals migrating from their home country to another country.<sup>152</sup> Many are economical in nature and others deal with quality of life.<sup>153</sup> No matter the purpose of the migration, one thing remains clear: the individual wants to gain entry into another country. The processes for gaining entry into a

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<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Frequently Asked Questions*, U.S. COMMITTEE FOR REFUGEES AND IMMIGRANTS, <http://www.refugees.org/about-us/faqs.html> (last visited Oct. 9, 2014).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

country as an asylum seeker or an immigrant almost always differ significantly.

There is confusion about the difference between an immigrant and an asylum seeker. There is also confusion about the difference between an asylum seeker and a refugee. An asylum seeker is “someone who is seeking international protection but whose claim for refugee status has not yet been determined.”<sup>154</sup> A refugee is someone who has been recognized to be a refugee.<sup>155</sup> The definition of refugee does not, however, cover every situation in which a person seeks to relocate such as “individuals or groups of people who leave their country only because of war or other civil disturbances, famine, natural disasters or in order to seek a better life.”<sup>156</sup> Refugees leave their country because they are fearful of persecution and real harm that might come to them if they returned.<sup>157</sup> On the other hand, a person who is leaving their country in order to create a better life is generally referred to as an “economic migrant.”<sup>158</sup>

Another difference between a refugee/asylum seeker and an immigrant is their legal status.<sup>159</sup> Immigrants are subject to the laws of the adopted country and usually, in order to enter the country, must meet certain requirements that are set by that country. However, a refugee is defined by the U.N.<sup>160</sup> Finally, a key difference is that an immigrant usually has the option to return to his country of origin. On the other hand, a refugee cannot return to his country of origin until the reason for his fleeing has ended.

#### **IV. Israel’s Asylum, Immigration, and Citizenship Laws**

It has been stated earlier in this note that there are certain requirements that states must fulfill as signatories to the Convention

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<sup>154</sup> Janet Phillips, *Asylum Seekers and Refugees: What are the Facts?*, PARLIAMENT OF AUSTRALIA DEP’T OF PARLIAMENTARY SERVICES 2, <https://www.aph.gov.au/binaries/library/pubs/bn/sp/asylumfacts.pdf> (last updated Jan. 14, 2011).

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> Phillips, *supra* note 154.

and Protocol. Israel is one of the states that are obligated to provide refuge for individuals fleeing countries deemed unsafe. However, “Amnesty International has long-standing concerns that Israel’s asylum system lacks transparency, does not offer asylum-seekers access to fair proceedings, and is ineffective in ensuring protection.”<sup>161</sup> Israel categorically denied African asylum seekers access to refugee status determination procedures, in violation of its obligations under the 1951 Refugee Convention, instead granting them temporary collective protection while simultaneously implementing a growing number of punitive measures against ‘infiltrators’ in an effort to pressure them to leave.<sup>162</sup>

In 2012, Israel began implementing the Prevention of Infiltration Law.<sup>163</sup> “This law allows for the automatic administrative detention of anyone, including asylum-seekers, entering Israel without permission, and allows detainees to be held without charge or trial for three or more years.”<sup>164</sup> Furthermore, a significant majority of the asylum seekers in Israel today hold a “conditional release”, or S2A5: a temporary visa that since November 2010 does not grant the bearer permission to work.<sup>165</sup> These methods, such as threatening to fine employers of asylum seekers without a work permit, constructing more detention centers, and the erection of a border fence where asylum seekers are entering Israel, are intended to deter further arrivals of asylum seekers.<sup>166</sup>

In September 2013 the Supreme Court of Israel revoked the Ant-Infiltration law stating it was a violation of human rights.<sup>167</sup>

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<sup>161</sup> *Refugees and Asylum-Seekers in Israel: Ineffective Protection*, AMNESTY INT’L, <http://www.amnesty.org.il/?CategoryID=319&ArticleID=347> (last updated Sept. 16, 2014).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Refugees in Israel*, AFRICAN REFUGEE DEV. CTR., <http://ardc-israel.org/en/content/refugees-israel> (last updated Oct. 2013).

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

However, Israel has ratified an amendment to the Prevention of Infiltration Law.<sup>168</sup> According to the amendment, the maximum amount of time an asylum seeker can be held in detention without trial is one year; in addition, the amendment added 550 additional officers to aid in anti-infiltration enforcement and granted 3,500 dollars in financial compensation to migrants who return to their home countries.<sup>169</sup> Prime Minister Benjamin Netanyahu said: "[t]he steps that we unanimously approved today are proportionate and necessary for maintaining the Jewish and democratic character of the state, and to restore Israeli citizens' security while following High Court guidelines and international law."<sup>170</sup> He further stated that "[t]he new decisions include combined actions designed to encourage illegal migrants to leave Israel and return to their countries of origin."<sup>171</sup> This policy seems to be at odds with the intent of the Convention and Protocol, which were enacted to prevent countries from returning asylum seekers because of the threat to their lives in their homelands.

The current process "requires an asylum seeker to submit a written explanation for his or her application, followed by an in-depth interview, research into the conditions of his or her country of origin and a decision as to whether that person meets the legal criteria for refugee status."<sup>172</sup> A5 Temporary Resident Visas are granted to recognized refugees and are renewable once every one to three years.<sup>173</sup> "It grants temporary residence status, permission to work and vote in municipal elections and social security benefits including medical care."<sup>174</sup> One cause for concern is that if the situation in a refugee's country of origin improves and it is deemed safe to return, he or she may face a demand to leave Israel.<sup>175</sup>

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<sup>168</sup> Omri Efraim, *State Ratifies Amendment to Prevention of Infiltration Law*, YNETNEWS.COM (Nov. 24, 2013, 9:44 PM), <http://www.ynetnews.com/articles/0,7340,L-4457427,00.html>.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Assistance to Apply for Refugee Status*, AFRICAN REFUGEE DEV. CTR., <http://ardc-israel.org/en/project/assistance-apply-refugee-status> (last updated Jan. 31, 2014).

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*



The UNHCR is also concerned with Israel's amendment to the Anti-Infiltration law that was recently passed.<sup>176</sup> This is because Israel has approximately 53,000 refugees and asylum seekers.<sup>177</sup> The organization is concerned that the provisions of the amendment could result in indefinite detention, with no release grounds, and could create a chilling effect on seeking asylum in Israel.<sup>178</sup>

The original 1954 Israeli Prevention of Infiltration Law was written to address security and other concerns about Arabs trying to cross the border into Israel.<sup>179</sup> The amended Prevention of Infiltration Law does not distinguish between asylum seekers and other migrants.<sup>180</sup> Since the second amendment to the Prevention of Infiltration Law, Israel has been accused of improper treatment of asylum seekers, which includes "denial of visas, denial of proper asylum procedures, arbitrary detentions and deportations."<sup>181</sup> The result of these discriminatory state-policies have been condemned by major international human rights NGOs and the U.N.<sup>182</sup> Israel does not consider those who enter the country illegally as asylum seekers, but rather, they are considered to be people who are breaking the law.<sup>183</sup> It has been suggested that Israel's discriminatory procedures stem from a fear of losing its strong Jewish majority if it continues to absorb thousands of migrants.<sup>184</sup> "In other words, the state which

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<sup>176</sup> UNHCR is Concerned at new Amendment to Israel's Law on the Prevention of Infiltration, UNHCR (Jan. 10, 2014), <http://www.unhcr.org/52cfe2a09.html>.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Israel's Asylum Procedures and the Prevention of Infiltration Law*, HEBREW IMMIGRANT AID SOCIETY (Mar. 6, 2012), <http://takeaction.hias.org/netcommunity/document.doc?id=131>.

<sup>180</sup> *Id.*

<sup>181</sup> Nicola Perugini & Neve Gordon, *The Pursuit of Ethnic Purity: Asylum Seekers, Refugees and "the Loss of Israel"*, COUNTERPUNCH.ORG (Jan. 27, 2014), <http://www.counterpunch.org/2014/01/27/asylum-seekers-refugees-and-the-loss-of-israel/>.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

denies the rights of people in search of both refuge (Africans) and return from refuge (Palestinians), is reproducing itself in the image of those nation-states which have constituted themselves in a framework of ethnic pureness.”<sup>185</sup>

Israel is a country that was founded by and for refugees because the Convention was enacted as a result of the Holocaust.<sup>186</sup> Today, however, Israel’s policy has changed from treating people fleeing from persecution as infiltrators instead of refugees.<sup>187</sup> “Instead of renewing the temporary protection documents it had been issuing asylum seekers since 2009, the Interior Ministry began handing out summonses to the new ‘open’ prison, ‘Holot.’”<sup>188</sup>

“The number of African asylum seekers leaving Israel more than doubled this month compared to last month, and totaled over 10 times the number of emigres in the month before that . . .”<sup>189</sup> This increase has been attributed to the new policies such as financial compensation to those who leave voluntarily and incarceration of those who did not obtain a visa.<sup>190</sup> Technically, asylum seekers are not incarcerated. They are held in a city near the desert where there are heavy restraints on their ability to move freely within the facility. It has been said that this facility, called Holot, is a prison.<sup>191</sup> “They created a new type of prison—which they described as an ‘open facility,’ but that for all intents and purposes is a prison—in which asylum seekers can be indefinitely detained until the state can deport them.”<sup>192</sup>

Another issue arises from Israel’s immigration laws, especially The Citizenship Law. The Citizenship Law was amended to require that all new citizens pledge allegiance to the principle upon which

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<sup>185</sup> *See id.*

<sup>186</sup> *See* Michael Schaeffer Omer-Man, *The Origins and Politics of Israel’s Refugee Debate*, 972MAG.COM (Jan. 28, 2014), <http://972mag.com/the-origins-and-politics-of-israels-refugee-debate/86180/>.

<sup>187</sup> *See id.*

<sup>188</sup> *Id.*

<sup>189</sup> Ilan Lior, *Number of Asylum-Seekers Leaving Israel Rises Tenfold in Two Months*, HAARETZ (Jan. 30, 2014), <http://www.haaretz.com/news/national/.premium-1.571336>.

<sup>190</sup> *See id.*

<sup>191</sup> *Id.*

<sup>192</sup> *See* Omer-Man, *supra* note 186.

Israel was founded.<sup>193</sup> The problem with the oath requirement is not that new immigrants must take an oath; in fact, many countries require oaths to be taken as the final step to be naturalized, including the United States.<sup>194</sup> One of the main concerns is that the oath requirement applies only to Non-Jewish citizens.<sup>195</sup> The oath requirement “mainly affect[s] Palestinians from the West Bank who marry Palestinian citizens of Israel.”<sup>196</sup> Furthermore, the pledge contains substantive content “beyond a general pledge of allegiance to the laws of Israel.”<sup>197</sup> It has been repeatedly stated that Israel’s laws are highly discriminatory towards the Palestinian people.<sup>198</sup>

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<sup>193</sup> See Nachman Shai, Ahmad Tibi, Arye Eldad, et al., *The Citizenship Law Amendment: Racist, Just, or Stupid?*, THE JERUSALEM POST (Oct. 10, 2010), <http://www.jpost.com/Features/In-Thespotlight/The-Citizenship-Law-amendment-Racist-just-or-stupid>.

<sup>194</sup> 8 C.F.R. § 337.1(a) (1998) (setting forth the text for the oath of allegiance, as specified by Immigration and Nationality Act 337(a), 8 U.S.C.A. § 1448(a) (West 2000));

see also *Naturalization Oath of Allegiance to the United States of America*, U.S. CITIZENSHIP & IMMIGRATION SERVICES, <http://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america> (last updated June 25, 2014).

<sup>195</sup> See Harriet Sherwood, *Israel Proposes Jewish State Loyalty Oath for New Citizens*, THE GUARDIAN (Oct. 10, 2010), <http://www.theguardian.com/world/2010/oct/10/israel-jewish-oath-new-citizens>.

<sup>196</sup> *Id.*

<sup>197</sup> Shlomo Avineri, *A Substantive Oath of Allegiance*, HAARETZ (July 25, 2010), <http://www.haaretz.com/print-edition/opinion/a-substantive-oath-of-allegiance-1.303870>.

<sup>198</sup> See Inst. for Middle East Understanding, *Israel's Discriminatory System of Ethnic Privilege is the Real Threat to Academic Freedom*, MONDOWEISS (Feb. 6, 2014), <http://mondoweiss.net/2014/02/discriminatory-privilege-academic.html>.

## Conclusion

The laws dealing with asylum seekers and naturalization are closely related when dealing with the Palestinian people. With that said, Israel's policies and laws dealing with refugees violate international law. Furthermore, the laws, policies and implementation of Israel's immigration laws are highly discriminatory and are also a violation of international laws as well as a violation of human rights. Israel is bound to the treaties it has voluntarily agreed to enter and may not deviate from them. Despite its obligations, Israel has consistently deviated from international law in the implementation of its policies and procedures.

Even if a law is not a violation of international law, it does not mean that it is a justifiable or even an acceptable way to legislate. In Israel's situation, an argument can be made for both sides of the issue. The international legal systems are complex and interpreted differently by different cultures, and countries. However, these detainment laws, implemented by Israel and others, are both a violation of international laws and also a moral catastrophe. It cannot be argued that these laws serve any other purpose besides discouraging those whose claims are falsified from applying for asylum. Meanwhile, imposter claimants will continue to try and seek admission through falsified refugee claims and those actual refugees are put through another emotional trial. The detainment laws only make it difficult for true asylum seekers to obtain refuge in a country.

Israel's law for the detainment of asylum seekers while their claims are being processed may not technically be a violation of international law. However, considering the wording and history of the treaties and how many other countries are currently revoking or rescinding those policies, it appears that it may have been, and still is, a violation of the Convention and Protocol. The detainment of asylum seekers while their claims are being processed can undoubtedly create a chilling effect. Asylum seekers are forced to choose between remaining in a country where they fear for their safety and wellbeing or escaping to a nearby country that will detain them for an extended period of time before their claim can be heard. As a side note, Israel is not the only country to have and enforce policies like this. However, just because multiple countries are functioning similarly does not justify this type of misconduct. Therefore, Israel, as well as any other country with detainment procedures for asylum seekers, is in clear violation of the text and spirit of the Convention and Protocol.

Israel's allegations of returns without hearing, if correct, are undoubtedly a violation of international laws. However, without any concrete evidence or confirmed instances of this taking place, it would be inappropriate to comment or come to a conclusion on the issue without established evidence. Nonetheless, the detention procedure, along with allegations such as these, will indubitably cause true asylum seekers, with valid claims, to hesitate in absconding to Israel.

Israel's immigration and citizenship laws are without a doubt discriminatory and in violation of numerous United Nations Resolutions. The laws differentiate between Jewish and Non-Jewish immigrants. The laws are in place to favor Jewish citizenship applicants over Non-Jewish applicants. This is the case for secular Jews as well, who do not observe the Jewish religious customs. It is difficult to say that Israel is a democracy when its laws discriminate against such a large portion of its population. These laws and practices have led some to say that, "[s]ome conceptions of Israel as a Jewish state compete tragically with democratic values."<sup>199</sup> Also, it has been said that, "[m]any things that others did to [Jewish followers] in the course of history we are doing to others today."<sup>200</sup>

To summarize, Israel's laws dealing with asylum seekers and those seeking citizenship through naturalization are violations of international law. Not allowing asylum seekers the opportunity to have their claims heard while also imprisoning them for extended periods of time are violations of almost every treaty and resolution that Israel is a part of. Additionally, the naturalization laws are also a violation of international law as the laws are attempting to eliminate virtually all avenues for the Palestinian people to obtain citizenship in Israel based on their religion.

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<sup>199</sup> MAZIE, *supra* note 14, at 220.

<sup>200</sup> *Id.* at 129.