

**Alternative Report submitted by the
African Refugee Development Center (ARDC)**

to the Committee on the Elimination of Racial Discrimination

on the occasion of the consideration of the

14th to 16th periodic reports of Israel

**Israel's violation of the Convention on the Elimination of All Forms of Racial
Discrimination with regard to asylum seekers and refugees in Israel**

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AFRICAN REFUGEE DEVELOPMENT CENTER (ARDC) – Since the establishment of the organization in 2004, the mission of ARDC has been to assist, support and empower asylum seekers who are in Israel by ensuring access to basic social services, facilitating integration into Israeli society and promoting self-sufficiency and ownership in matters affecting their lives. We advocate for the rights of refugees and asylum seekers and for fair and humane Israeli asylum policies. ARDC publishes information on a wide variety of issues human rights issues that affect the asylum seeker and refugee population in Israel, promotes community empowerment and serves as a source of information for journalists and researchers.

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Summary

This report is in response to the 14th, 15th and 16th periodic reports of the State of Israel to the Committee on the Elimination of Racial Discrimination (CERD).

This report demonstrates that Israel continues to ignore its international obligations towards asylum seekers and refugees which are predominately from sub-Saharan Africa. Various Israeli laws, policies and practices are racially discriminatory at their basis against this vulnerable population. For instance, Israel maintains a harsh policy of detention, tolerates segregation in the education system in Eilat and allocates temporary group protection to over 90 percent of the asylum seekers who arrive to Israel. As a result, asylum seekers live in constant fear of being returned to their countries of origin to face further persecution.

The root of this discrimination stems from the tension created by Israel's sensitive political-demographic status as a Jewish state. Several of Israel's high-ranking politicians have demonstrated an apparent lack of commitment in protecting the human rights of asylum seekers and eliminating racial discrimination. Their racially discriminatory and inciteful language, wholly adopted by the media, is at least partially responsible for generating the community-wide backlash against the asylum seekers that is documented in this report.

This report is supplemented by a **video report** which provides visual documentation of the rising tide of hatred, fueled not only by certain Members of the Knesset but also by the Israeli community, and additional material not included in the written report. Whilst copies of the video have been provided to CERD, it can be viewed by members of the public at <http://www.ardc-israel.org/en/articles/83>.

In closing ARDC offers recommendations where Israel could make advances in meeting its obligations under CERD.

The report has been prepared with significant contribution by David Sheen, a journalist who has reported from Israel since 1999. In his work as a journalist, Sheen has extensively documented racial discrimination against many sectors in the Israeli community and particularly against the non-Jewish African asylum seekers. Together ARDC and Sheen are able to cite an extensive body of evidence to demonstrate that the Government of Israel has failed to meet its obligations under CERD with respect to this community.

Additionally, our response to Articles 5(d) and 5(e)(v) regarding detention of unaccompanied minors and the segregation in the education system in Eilat were written with contributions from our partner organization Assaf – Aid Organization for Refugees and Asylum Seekers in Israel.

Introduction

'Most anti-racist country'

On 1 May 2011 of this past year, when the State of Israel commemorated Holocaust Remembrance Day, President Shimon Peres addressed the nation on live television from Yad Vashem, the country's national Holocaust museum. There he claimed that out of all the countries in the world, Israel did the most of all of them to combat racial discrimination.

"We, of the Jewish nation, were victims of racism, persecution and discrimination. But we never neglected the imperative to respect every person," said Peres. "Every citizen of Israel, regardless of religion or race, knows that Israel is, and must be, the most anti-racist country in the world."¹

Contrary to the views of President Peres, ARDC holds that there are many groups of people that experience racial discrimination in Israel. This report, however, will specifically focus on racial discrimination towards non-Israeli, non-Jewish asylum-seekers. These are the tens of thousands of sub-Saharan African people who have entered Israel in recent years by walking across its open border with Egypt. There are currently an estimated 45,000 asylum seekers in Israel and over 90 percent of this population has arrived since 2007. Eritreans and Sudanese represent 60 percent and 25 percent of the population respectively. Other significant groups of asylum seekers are from Ethiopia, Ivory Coast and the Democratic Republic of Congo.

As this report will demonstrate, the State of Israel faces constant tension between its obligations under domestic and international law and its sensitive political-demographic considerations as a Jewish state. The coalition government, elected in 2009, is dominated by ethno-religious and extreme right wing parties and key positions are held by politicians openly hostile to asylum seekers. For instance, Eli Yishai, Minister of Interior and responsible for refugee affairs, is a member of the ultra-orthodox party Shas and has repeatedly declared that he will protect the Jewish majority. His position on national immigration, like many others in the Knesset but notably Michael Ben-Ari, is rooted in a desire to safeguard the Jewish character of the state.

From mid-2009, confronted by an influx of non-Jewish refugees, the government began to introduce a number of interrelated measures designed to deter further arrivals. This includes the passage of the Anti-Infiltration Bill in January 2012, moving to fine employers of asylum seekers without a work permit, the proposed construction of a detention centre for asylum seekers, the erection of a border fence and limitations to the protection process.

These policies, combined with the racist comments of many politicians and others in positions of authority, is a strong contributing factor in the massive public backlash against the asylum seeker and refugee community in Israel. We are now witnessing an unprecedented level of open racism against the African community in public protests, mainstream media and daily life.

¹ Yadveshemhebrew (1 May 2011), 'President Shimon Peres addresses on the event of Holocaust Remembrance Day', video file at <<http://www.youtube.com/watch?v=Wz1Gugn7QtA>> at 17 January 2012.

Since the Prevention of Infiltration Law was passed, a small group of Israelis have made public proclamations openly declaring their intentions to defy the law and to come to the aid of the asylum seekers, regardless of the legal consequences that they could face as a result. The Jewish Israelis who have taken vows to violate the law and stand in solidarity with this population are morally significant, but unfortunately, they are few in numbers.

Traditionally, Israel's Supreme Court has stood as a bulwark against legislation passed in the Knesset that was deemed to be anti-democratic or in contravention of Israel's so-called Basic Laws, in lieu of a legal constitution. However, a new round of judicial appointments have recently stacked the Supreme Court with conservative judges. In its first critical test, the new composition of the court failed to strike down the 2003 Citizenship Law, which violates the rights of non-Jewish citizens of Israel and denies them equal treatment under the law.

It has become abundantly clear that the situation of asylum seekers and refugees in Israel is becoming perilous, and that there are no significant forces in Israeli society that could mount a serious defense to secure their human rights.

Non-citizens and CERD

Racial discrimination occurs all over the world, and some of the racial discrimination in Israel occurs for some of the same reasons. But there are unique conditions specific to Israel, a self-proclaimed Jewish state, which cultivate an atmosphere in which racial discrimination against non-Jewish African asylum seekers is especially potent.

Some Israelis who are hostile to the presence of asylum seekers claim that their hostility is not due to bias against the asylum seekers' race, but against their lack of Israeli citizenship.

The Committee on the Elimination of Racial Discrimination (CERD) takes the position that the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is applicable to discrimination against immigrants or foreigners. CERD has recommended that states adopt measures to protect the rights of non-citizens against discrimination in law and in practice. Therefore, the claim that asylum seekers are non-citizens, and therefore ineligible for protection under CERD, is irrelevant for the purposes of this report.

Article 2(1)(a) Ensure authorities do not engage in racial discrimination

Government and media rhetoric that asylum seekers are violent criminals

A report of October 2011, issued by the Knesset research centre, refutes the common, unfounded allegations by many government representatives and media outlets that African asylum seekers increase crime rates.² The report, examining crime rates among the African population in Israel and the general population in cities where many asylum seekers reside in, revealed that Africans were much less likely than Israelis to be involved in crime.

² Knesset Research Center, 'Data on crime by infiltrators and asylum seekers and against infiltrators and asylum seekers', 11 October 2010 <<http://www.knesset.gov.il/mmm/data/pdf/m02625.pdf>> at 18 January 2012 (in Hebrew).

A quick survey of the Israeli media's coverage of the issue reveals misleading headlines and reports filled with racist stereotypes. For example, *Maariv* reported in August 2010 about the establishment of a,

special police force that will deal with crimes perpetrated by refugees from Darfur in Eilat. ... The significant and scary statistic that propelled the Eilat police into action was a 300 per cent increase in crimes perpetrated by refugees.³

Israeli officials frequently likewise claim that asylum seekers (referred to as “infiltrators” or “illegal migrant workers”) drive up crime rates. A month earlier the elected mayor of Eilat, Meir Izhac-Halevy, claimed that

the crime rate has risen sharply: robbery, violence and sexual harassment have become part of every day life. The police are doing nothing and the residents are afraid to leave their homes.⁴

However, statistics from the Eilat police department that were shared with the Knesset research center reveal that in 2010 the number of criminal incidents involving refugees was 42 (in the first seven months), while the number of offences in 2008 and 2009 was 216 and 76 respectively, showing a significant drop, and not an increase in the rate of crime committed by African asylum seekers. In addition, the Knesset's statistics show that Israelis are 10 times more likely to commit crimes in Eilat than African refugees.

In Tel Aviv, Binyamin Babayoff, a council member and a member of Shas claimed in June 2010 that the Sudanese brought “filth and vandalism” and that “according to police figures, in places where illegal infiltrators live, crime rates have increased significantly, and they are responsible for 40 per cent of criminal offenses.”⁵ However, official statistics by the Tel Aviv police department show that African refugees were responsible for only 0.72 percent of crimes in Tel Aviv in 2010. Israelis were six times more likely to be involved in a crime in Tel Aviv than African asylum seekers.

This rhetoric by officials in positions of authority and their false portrayal of African asylum seekers as violent criminals is a deliberate strategy to dehumanize the vulnerable population and justify the government's inhumane policies such as arbitrary and indefinite detention.

Anti-asylum seeker sentiment from the Members of the Knesset

The most vocal Member of Knesset is Michael Ben-Ari, from the ultra-right National Union party. Ben-Ari calls himself a student of Rabbi Meir Kahane, the radical right-wing demagogue who was banned from the Knesset in 1988 for his racism.

Sheen interviewed Ben-Ari at his Knesset office in August 2010 for the purpose of reporting on his political proposals and ideas. Referring to both migrant workers from Asia and to asylum seekers from Africa, Ben-Ari insisted that they should be deported out of Israel.

³ Simeon Aifrgen, ‘Special unit to handle Sudanese refugee crime’, *NRG*, Israel, 28 August, 2011 <<http://www.nrg.co.il/online/1/ART2/150/440.html>> at 16 January 2012 (in Hebrew).

⁴ Dana Weiler-Polak, ‘Eilat fighting infiltrators: “The government is doing nothing”’, *Ha’aretz*, Israel 7 July 2010 <<http://www.haaretz.co.il/news/education/1.1210830>> at 16 January 2012 (in Hebrew).

⁵ Yoav Zitun, ‘Initiative: Expel “filthy” infiltrators from Tel Aviv’, *YNet*, Israel, 23 June 2010 <<http://www.ynetnews.com/articles/0,7340,L-3909889,00.html>> at 17 January 2012.

I, too, am willing to pack the bags of the Filipinos. Let them go home. Go home to the Philippines, you have a home there! How can you call this an expulsion? What expulsion? They're going home. Every normal state in the world would do this.

Ben-Ari says that the presence of many non-Jewish people in Israel would be catastrophic for the Jewish people, and he classifies those Israelis who are not uncomfortable with the prospect as enemies of the state.

There are those that are hostile to the state, and therefore they want to turn the state into citizens of the world. We'll bring here a million Africans, half a million Filipinos, two or three million Chinese, and that's the end of the story for Israel.⁶

Ben-Ari does not only incite against asylum seekers in the media, he also rallies residents of Tel Aviv to publicly protest the presence of asylum seekers in their neighborhood. At a December 2011 march through a South Tel Aviv park frequented by many African asylum seekers, Sheen filmed Ben-Ari leading an angry crowd in chants of "Sudanese to Sudan!", "Tel Aviv for the Jews!" and "We have come to expunge the darkness!"⁷

With the help of his parliamentary assistants and local leaders, Ben-Ari helped found a "neighborhood defense" posse in March 2011 that patrols neighborhoods of South Tel Aviv with high concentrations of asylum seekers. Whilst there have not been any reports of physically violent altercations between Ben-Ari's neighborhood defense group and local asylum seekers at the time of this writing, many asylum seekers, however, have reported being physically attacked and bullied by native Israelis.

At the December 2011 anti-refugee rally, Ben-Ari explained to the assembled crowd that he had channelled their street-level political activity into practical results. He recounted a recent deliberation in the Knesset to demonstrate that this is the case. Ben-Ari said that when Prime Minister Netanyahu confessed that he was not expediting the construction of a containment facility for asylum seekers, Ben-Ari told him,

'Mr. Prime Minister, members of your political party are crossing over to mine!' I saw from his facial expression that he got it.... On Thursday, [Interior Minister] Yishai told the Knesset that the detention center will be built. I asked him, 'Is there a start date?' He wouldn't answer me. I put the pressure on! Two days later, I saw Yishai and he told me, 'Netanyahu screamed at [Finance Minister] Steinritz to come up with the money. And it's all because of one thing: we have awoken!'"⁸

⁶ David Sheen interviewed MK Michael Ben-Ari in August 2010, video file at < <http://www.ardc-israel.org/en/articles/83>> at 30 January 2012.

⁷ bluepilgrimage (12 December 2011) 'Anti-African Rally in Tel Aviv', video file at <<http://www.youtube.com/watch?v=7Sv14Kwuk-8>> 17 January 2012.

⁸ Ibid.

Article 2(1)(c) - Removal of racial discrimination in legislation and policy

Lack of implementing asylum legislation and reluctance to grant rights

In response to paragraph 300 in which the state provides that Israel is a party to the 1951 UN Convention on the Status of Refugees, ARDC notes that the state has no implementing asylum legislation. As a result, the system is marred by ad hoc policies and regulations.

The state's continues in the same paragraph that "any person who meets the Convention's definition of a refugee may apply for refugee status in Israel". However, this is wholly inaccurate. Less than 10 percent of the asylum seeker population in Israel is permitted to apply for refugee status. Israel is very reluctant to grant refugee status and since its establishment in 1948, only 143 individuals have been recognized as refugees under the Refugee Convention.

Further, certain nationalities, which currently includes Eritreans and Sudanese, are denied the opportunity to even enter the 'refugee status determination' (RSD) procedure to seek refugee status. Instead such nationalities, which collectively represent approximately 90 per cent of the total asylum seeker population in Israel, are granted temporary group protection which confers an inferior, unstable status that must be renewed every three months. In other words, these individuals are denied the opportunity to apply for refugee status in Israel. Yet, in several other countries Eritreans are typically recognized as refugees under the Convention. According to the 2009 UNHCR Statistical Yearbook, the refugee recognition rate in Canada and the United States is 99 percent and 97 percent respectively. These figures are closely followed by Germany, South Africa and the United Kingdom with rates of 82 percent, 74 percent and 66 percent respectively.⁹

Anti-Infiltration Law

On 9 January 2011, the Israeli Knesset passed the "Anti-Infiltration Bill". Prime Minister Binyamin Netanyahu has supported this bill in efforts to create new policies to deal with the large influx of immigrants crossing into Israel. The purpose of the bill is to deter the arrival of further asylum seekers and is arguably another measure to preserve the Jewish majority. ARDC considers that the new law is discriminatory in that it targets African asylum seekers escaping persecution.

The law passed the second and third readings in the plenum with a large majority: 37 Knesset members in favor and eight opposed. A similar proposal was dropped in July 2010 as a result of a strong public backlash and a request from the Ministry of Defence. However, as feared by refugee human rights organizations, it was quickly replaced by a revised bill which passed its first reading on 28 March 2011 without debate.

The bill fails to distinguish between asylum seekers, migrant workers and infiltrators. All non-citizens who do not enter through an official border crossing into Israel, will be deemed

⁹ United Nations Refugee Agency, 'UNHCR Statistical Yearbook 2009', October 2010
<<http://www.unhcr.org/4ce532ff9.html>> at 18 January 2012.

to be “infiltrators”. As such, the new law will make it possible for unauthorized immigrants, including asylum seekers, to be imprisoned without trial or deported.

The bill amends the Prevention of Infiltration Law of 1954, which was passed to prevent the entry of Palestinian terrorists during a state of emergency, however, was never lifted. It was considered emergency legislation that was enacted to address major threats to Israel’s security. The new bill, however, was expanded to effectively now include migrant workers or asylum seekers who enter Israel and do not necessarily pose a threat to Israel’s security.¹⁰

Pursuant to the new law, Israeli authorities will be allowed to hold individuals who they deem to be “infiltrators” for more than three years in detention centers without any charge or trial. Previously, an individual could be held for up to 60 days as they were handled under the 1952 Law of Entry into Israel. As such, individuals who are not able to prove their refugee status immediately to Israeli authorities can be detained for an undetermined period of time.

Similarly, the period of detention before appearing before a judge has been extended from 96 hours to 14 days. Furthermore, the new law also states that individuals in Israel caught helping illegal immigrants who are involved in illegal activities could face prison sentences of five to fifteen years.

Possibly one of the most alarming introductions is that individuals from “enemy” states, such as Sudan, and their children, can be held for an indefinite period of time regardless of any genuine threat that such individuals may pose to Israel’s security.

In the case that asylum seekers are imprisoned, incorrectly labelled as infiltrators or migrant laborers, Israel will be acting in violation of the UN Convention for Refugees if they are deported. The Convention states that a refugee may not be removed to a place where his life or liberty would be at risk on the basis of his “race, religion, nationality, membership of a particular social group or political opinion.”¹¹ Israel was a founding signatory of the convention, and the new legislation passed by the Knesset puts its adherence to the convention in serious jeopardy.

National demographic policy

In 2002, the government of Israel activated a body called the Public Council on Demography in order to formalize a national demographic policy. In his book "Jewish Demographic Policies", Professor Della Pergola summarizes the main points of this policy. While most of the policy consists of recommendations geared towards increasing the amount of Jewish people living in Israel, it also explicitly includes recommendations geared towards reducing the amount of non-Jewish people living in Israel.

The following year, in 2003, the Knesset passed the Citizenship Law, which forbids Palestinians who marry Israeli citizens from becoming citizens of Israel. The law thereby

¹⁰ Jonathan Lis, ‘Knesset passes bill that could put asylum seekers in jail without trial’, *Ha’aretz*, Israel, 10 January 2012 <<http://www.haaretz.com/print-edition/news/knesset-passes-bill-that-could-put-asylum-seekers-in-jail-without-trial-1.406351>> at 16 January 2012

¹¹ Article 33, *Convention Relating to the Status of Refugees*, opened for signature 18 July 1951, 189 UNTS 137 (entered into force 22 April 1954)

inhibits the growth of the non-Jewish population of the country, and also encourages the existing non-Jewish population to leave the country, in order to live with their partners of choice. This month, in January 2012, the Supreme Court upheld the law. Justice Asher Grunis wrote in the majority decision, "human rights are not a prescription for national suicide", thereby explicitly enshrining the primacy of "a clear and undisputed [Jewish] majority among the country's total population" over the principle of human rights in Israeli law.¹²

Della Pergola insists that there is nothing strange about Israel formalizing a national demographic policy. In his efforts to normalize this type of policy, he points out that Germany, France and Italy also have national demographic policies. Professor Jonathan Anson of Ben Gurion University of the Negev, however, points out that this is a patently false comparison. Anson's research focuses on demography and he teaches demographic processes at the university. He insists that the Israeli approach to demographics is nothing at all like that of the other countries that Della Pergola makes reference to.

"Germany, France and Italy have committees that look at demographic problems. But they don't look at how do we have enough ethnic Germans to outnumber Turks, or more northern Italians to outnumber Sicilians, or more ethnic French to outnumber North Africans," Anson says. Due to the low birth rates in these countries, the labor force is shrinking in proportion to the amount of retirees in the population. Hence, these countries must calculate the amount of immigrants they need to attract in order to maintain economic stasis. "What is specific to Israel is we try to encourage Jews to have children, and we try not to encourage Arabs to have children," Anson says. "We are unique in the unabashed way that we do it. We openly say that we do not want other people around."¹³

Article 3 - Racial segregation

Hadera-Gedera policy

At paragraph 165 of the state report it is claimed that "[t]here exist in Israel no restrictions of any kind as to place of residence nor is there any segregation of any kind." This is inaccurate. In 2008, the government implemented a new policy under which in order to be released from detention, asylum seekers were required to sign an agreement that they would not live and work in central Israel – in the area from Gedera in the south and Hadera in the north. Between these two centers, however, lies most of the state's economic, cultural and social wealth and asylum seekers have a greater opportunity of finding employment, accessing aid services and the UNHCR. As result of collaborative advocacy efforts by refugee rights organizations, the policy was abandoned in July 2009.

¹² Harriet Sherwood, 'Court upholds law banning Palestinian spouses from living in Israel', *The Guardian*, United Kingdom, 12 January 2012 <<http://www.guardian.co.uk/world/2012/jan/12/israel-palestinian-spouses-ban> > at 29 January 2012.

¹³ Blue Pilgrimage, 'Demography of Israel', 14 January 2012, video file at <<http://www.youtube.com/watch?v=rF4BbXNU9tQ>> at 30 January 2012.

Article 4(a) - Establishing criminal offences related to racial discrimination and racial superiority

Absence of disciplinary measures against rabbis who promoted racism

A rabbinical edict was publicized in 2010 in the Israeli media against renting to non-Jews including asylum seekers (further details are available below on page 22). Rabbis are employed by the state and as such are civil servants with an obligation to the broader public.

Prime Minister Benjamin Netanyahu later condemned the discriminatory act, however, not in an address to the nation. "How would we feel if we were told not to sell an apartment to Jews?" Netanyahu reportedly said at a Bible trivia contest that he attended, according to Israeli newspaper *Ha'aretz*. "We would protest, and we protest now when it is said of our neighbors."¹⁴

No other public comments by Netanyahu regarding the rabbis' letter were reported by the media. As of this writing, the religious edict has not been retracted and remains in effect. No disciplinary action has been taken against the rabbis for signing the letter, and the municipal chief rabbis continue to receive considerable salaries from the state coffers.

Six months after the publication of the rabbis' letter, in May 2011, the Religious Services Minister announced that municipalities would increase the salaries of novice rabbis on its payroll by 250 percent to 16,000 - 29,000 NIS, according to a report in *Ha'aretz*. The report said that veteran rabbis receive monthly salaries of more than 30,000 NIS.¹⁵ According to Israel's Central Bureau of Statistics, the average Israeli salary for the month of September 2011, the last month for which statistics were available at the time of this writing, was 8,800 NIS.¹⁶

The Declaration of the Establishment of the State of Israel (1948), the state's foundational text in the absence of an official constitution, explicitly declares "it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex".

In its own submission to the CERD, the state has noted that Section 144B of the Penal Law "provides for a penalty of up to five years' imprisonment for a person who publishes material with the intent to incite racism, even if ineffectual in result." No rabbis, however, have been charged under Section 144B for issuing this religious edict. By permitting them to keep their jobs and taking no disciplinary actions against them, the state has clearly neglected its duty to ensure equality for its non-Jewish inhabitants and given tacit approval for widespread racial discrimination.

¹⁴ Mordechai Kremnitzer and Amir Fuch, 'Mr. Prime Minister, douse the flames of racism', *Ha'aretz*, Israel, 20 December 2010 <<http://www.haaretz.com/print-edition/opinion/mr-prime-minister-douse-the-flames-of-racism-1.331565>> at 17 January 2012.

¹⁵ Zvi Zrahiya and Yair Ettinger, 'Salaries of new municipal rabbis to increase by 250%', *Ha'aretz*, Israel, 24 May 2011 <<http://www.haaretz.com/print-edition/news/salaries-of-new-municipal-rabbis-to-increase-by-250-1.363628>> at 17 January 2012.

¹⁶ Central Bureau of Statistics, October 2011 <http://www1.cbs.gov.il/hodaot2012n/26_12_002t2.pdf> at 17 January 2012.

Definitions of 'Jewish' and amendments to the conversion process to prevent naturalization of asylum seekers

Religious discrimination is not one of the forms of discrimination that is covered by ICERD. Therefore, it could be argued that discrimination by Jewish people against non-Jewish people in Israel technically does not fall under the purview of CERD for the purposes of this report. However, CERD has determined that since ethnicity, nationality and religion are determinants that overlap, it considers claims of "double discrimination" on the basis of religion and another ground, such as ethnicity or nationality.

In the case of Judaism, these determinants overlap even more, because some Jewish people self-identify as belonging to a Jewish nation or race, others self-identify as belonging to a Jewish ethnic or cultural group, and still others self-identify as belonging to a Jewish religion. Of course, some Jewish people self-identify as belonging to more than one or all of these categories.

The legislative, executive and judicial branches of the Israeli government do not accept self-definition as sufficient criteria for establishing Jewish personhood. In fact, different special measures conferring advantages to Jewish people are determined by different criteria.

For example, under the Law of Return, Israeli citizenship is granted according to a combined racial and religious definition of Judaism: people are eligible for automatic Israeli citizenship if they even have one Jewish grandparent, but that one Jewish grandparent must be considered Jewish under Orthodox Jewish religious law.

It could be argued that the Law of Return is not a special measure that gives preferential treatment to Jewish people as a racial group, because it is possible for non-Jewish people to convert to Judaism.

Non-Jewish people can undergo a conversion process during which they study the history of the Jewish people and the tenets of the Jewish religion and strictly follow its laws. At the end of this lengthy process, a board of rabbis evaluates the candidate and may pronounce them to be Jewish under religious law. However, in practice, the gates of Jewish personhood are zealously guarded by rabbis and religious politicians who do not want people who are not racially or ethnically Jewish to become Jewish and live in Israel among Jewish people.

At a public conference in Jerusalem in June 2011, Sheen filmed Israeli Justice Minister Ya'akov Ne'eman speaking on a panel about conversion to Judaism and expressing adamant opposition to the prospect of asylum seekers converting to Judaism and become naturalized Israeli citizens.

We have a problem in Israel. We have hundreds of thousands of illegals, mainly from African countries, that crossed the border illegally, arrived here, and they want to stay here, because it's better for them here than in the African countries. That is the problem of the State of Israel. It is impossible to allow anyone who wants to, to convert to Judaism! Because then it permits anyone to enter the State of Israel and receive citizenship! Or, if someone is in the country illegally, by converting, they can become

legal.¹⁷

When the Justice Minister of the State of Israel states non-Jewish people from Africa must be prevented from converting to Judaism because it will lead to their acquisition of permanent legal status in the country, then the Law of Return is not a policy of religious preference, but of racial discrimination, in practice.

Article 4(b) - Prohibition of organizations which incite racial hatred

Media's role in perpetuating racial discrimination against asylum seekers

The Israeli media promotes racial discrimination by unquestioningly repeating the provocative and powerful language of the government which labels all asylum seekers entering Israel as “infiltrators” (in Hebrew, “mistanenim”). This is a term that in the past has been used to exclusively describe armed militants but is now the language used in new laws such as the Anti-Infiltration Law and by politicians. The term implies that seeking asylum is a crime and that the individuals arriving are not legitimate refugees deserving of public support. As a result, the media contributes to a heightened level of public discrimination against asylum seekers. ARDC notes that the majority of talk-backs to news articles, which are approved by the online newspaper, are racist against the so-called “infiltrators”.

Judeo-supremacy of the Shas political party

While Ben-Ari is certainly the most public figure to demand the deportation of asylum seekers, he is not nearly the most powerful. Several members of the government who hold ministerial positions also speak openly of expelling asylum seekers from the country. One of these is Interior Minister Eli Yishai, leader of the ultra-Orthodox Shas party, the third-largest party in the governing coalition. As Interior Minister, Yishai has final word over who is permitted to enter the country and who is granted residency and Israeli citizenship. Additionally, Yishai is responsible for overseeing Israel's asylum procedures.

In October 2009, Yishai told Israel Channel 2 that asylum seekers and other foreigners from the so-called 'Third World' must not be allowed to enter Israel, because if they are permitted to, they will infect Israelis with a whole host of diseases, both physical and societal.

If hundreds of thousands of foreign workers come here now, they will bring with them a profusion of diseases: hepatitis, measles, tuberculosis, AIDS, drugs. Will any of Israel's citizens be willing for migrants to enter at this rate?¹⁸

Over two years have passed since Yishai made those slanderous statements, smearing an entire population with a blood libel. In that time, thousands of asylum seekers have entered the country, and yet, no outbreaks of communicable diseases have resulted from their presence.

¹⁷ PresidentialConf (20 July 2011), 'Mr. Ya'akov Ne'eman at Facing Tomorrow 2011', video file at <<http://www.youtube.com/watch?v=FhM3rSBmyiA>> at 17 January 2012.

¹⁸ Dana Weiss, 'Eli Yishai: Foreign Workers will Bring Disaster', *Channel 2*, Israel, 31 October 2009, <<http://www.mako.co.il/news-military/politics/Article-a4e3da7654ba421004.htm>> at 17 January 2012 (in Hebrew).

It is worth noting that these types of statements are not the exceptions to the rule, but the rule itself, for members of Yishai's Shas party. In October 2010, the group's spiritual leader, Ovadia Yosef, compared all non-Jewish people to donkeys who serve their masters, stating that, "The sole purpose of non-Jews is to serve Jews."¹⁹

Secular discourse: 'demographic threat'

Israel's most powerful politician, Prime Minister Benjamin Netanyahu, is a secular Jew, and does not generally use religious language to characterize non-Jewish people as threats. Secular Jews like Netanyahu who oppose the presence of asylum seekers in Israel often use a different kind of vocabulary to incite fear of Africans: the language of 'demographics'.

In December 2003, Netanyahu, then Finance Minister, said at a public conference in Herzliya, "If there is a demographic problem - and there is - it is with the Israeli Arabs who will remain Israeli citizens." At a government meeting in July 2010, in his current position as Prime Minister, he said that asylum seekers were a demographic "threat to the Jewish and democratic character of the country"²⁰ and then in March 2011 that they "cause great damage to the Jewish population and the Zionist enterprise".²¹ As recently as 4 December 2011, Netanyahu remarked in the weekly Cabinet meeting, "I see the phenomenon of being flooded by illegal, job-seeking infiltrators as a threat to the economy, to society, to security and to the delicate demographic fabric upon which the State of Israel is based".²²

Interior Minister Yishai is even more alarmist than Netanyahu about the demographic threat posed by 'infiltrators' and that there are more than one million people waiting to infiltrate Israel.²³ He states:

I will safeguard the Jewish majority and the state, and I ensure that the last of the Sudanese, and the Eritreans, and all of the infiltrators, to the last of them, will return to their countries. I have pity on the people of Israel.²⁴

Yishai does not hesitate, as an extreme act of racial discrimination, to single out the nationalities of which he wants to rid Israel.

William Tall, Representative to the United Nations High Commission on Refugees in Israel (UNHCR), spoke on a panel in Jerusalem in June 2011 to discuss the migration of refugees to Israel. Tall told the audience that one reason for the Israeli government's reticence to

¹⁹ Jonah Mandel, 'Yosef: Gentiles exist only to serve Jews', *Jerusalem Post*, Israel, 18 October 2010 <<http://www.jpost.com/JewishWorld/JewishNews/Article.aspx?id=191782>> at 17 January 2012.

²⁰ Barak Ravid, 'Netanyahu: Illegal African immigrants – a threat to Israel's Jewish character', *Ha'aretz*, Israel, 18 July 2010 <<http://www.haaretz.com/news/national/netanyahu-illegal-african-immigrants-a-threat-to-israel-s-jewish-character-1.302653>> at 16 January 2012.

²¹ Ilana Curiel, 'PM says IDF to build fence along Jordan border', *YNet*, 15 March 2011 <www.ynetnews.com/articles/0,7340,L-4042799,00.html> at 18 January 2012.

²² Israel Ministry of Foreign Affairs, 'Cabinet communique', 4 December 2011 <http://www.mfa.gov.il/MFA/Government/Communiques/2011/Cabinet_communique_4-Dec-2011.htm> at 18 January 2012.

²³ Yair Altman, 'Yishai: We'll fight for Jewish majority', *YNet*, 31 October 2010 <www.ynetnews.com/articles/0,7340,L-3977592,00.html> at 18 January 2012.

²⁴ JTA, 'Israel's Yishai determined to deport Africans', 8 December 2011 <www.jta.org/news/article/2011/12/08/3090643/israels-yishai-determined-to-deport-africans> at 18 January 2012.

accept asylum seekers is its demographic implications: "You have people who generally believe that this influx of Africans, non-Jewish, from Africa, is a threat to the very delicate demographic balance in Israel. People believe this," Tall said.²⁵ It is necessary to parse this statement about a 'delicate demographic balance' in order to understand much of the secular Jewish opposition to asylum seekers in Israel.

The panel at which Tall made his statement was moderated by Hebrew University Professor Emeritus Sergio Della Pergola. Only one month before the panel was held, in May 2011, Della Pergola published a new book entitled 'Jewish Demographic Policies' in Hebrew and English. In the book, Della Pergola declares that it is an indisputable axiom that the government must prevent the non-Jewish population of the country from growing significantly: "The main demographic challenge of Israel as a core state of the Jewish People is to preserve a clear and undisputed majority among the country's total population," he writes.²⁶

The Declaration of Establishment of the State of Israel made reference to "a Jewish state", a state that would have Jewish cultural characteristics, but it did not mention a necessity to establish or maintain Jewish demographic dominance, "a clear and undisputed majority among the country's total population," or anything of the sort.²⁷ The declaration states that "The State of Israel will be open for Jewish immigration and for the Ingathering of the Exiles; it will foster the development of the country for the benefit of all its inhabitants". It does not state that the state will take measures in order to prevent the growth of the non-Jewish population of the country.

In practice, however, for most of its history, the state has operated as if Della Pergola's call "to preserve a clear and undisputed [Jewish] majority" is a prime directive, and has legislated many laws which favor the growth of the country's Jewish population, at the expense of the country's non-Jewish population.

Article 5(b) - The right to protection from violence

Whilst the ARDC is aware of cases of violent acts committed against members of the African refugee and asylum seeker community, these are generally isolated incidents. However, ARDC is alarmed by the dramatic rise in public protests and commentary against the community and sets out some examples here. These have been extensively documented by David Sheen.

²⁵ PresidentialConf (1 August 2011), 'Mr. William Tall at Facing Tomorrow 2011', video file at <<http://www.youtube.com/watch?v=eaGDuXRpBCA>> at 17 January 2012.

²⁶ Sergio Della (2011), 'Jewish Demographic Policies', p 274.

²⁷ The Declaration of the Establishment of the State of Israel, 14 May 1948 at <<http://www.mfa.gov.il/MFA/Peace%20Process/Guide%20to%20the%20Peace%20Process/Declaration%20of%20Establishment%20of%20State%20of%20Israel>> at 18 January 2012.

Apocalyptic race war

One reason that some Israelis oppose the presence of African asylum seekers specifically, and other non-Jewish people generally, is a belief in Biblical end-times prophecy. Apparently, some Jewish people subscribe to the notion that a religious world war to end all wars is imminent. According to this belief system, when the final battle breaks out, every non-Jewish person in the country will become their mortal enemy.

At a rally in downtown Tel Aviv on 4 March 2011, a group of demonstrators demanded that foreigners be deported. "I live in Shapira neighborhood in South Tel Aviv. And there, it is worse than anything you can imagine. The Sudanese steal," one middle-aged woman told Sheen. "They do all kinds of things, even murder."

Of course, it is perfectly normal to be upset by violent crime in one's own neighborhood. "So you are upset about crime?" Sheen asked her. "It's not only crime!" the woman responded. "They're not Jews! Why should they be here with us? The Talmud says that soon there will be an apocalypse, and the messiah will come. And then all the non-Jews will be on the side of Evil, and then we'll have big problems. So if we know the apocalypse is coming, why do we allow these non-Jews to be here?"²⁸

Collusion with terrorists

Other Israelis who do not subscribe to fundamentalist interpretations of end-times prophecies have also cast asylum seekers as potential terrorists, even though Israeli security services have not reported even a single incident of political violence committed by a member of the group.

The very term that Israeli legislators who are hostile to asylum seekers use to describe them, "infiltrators", implies that they are breaking the law by their very presence in the country. In a country as defense-conscious as Israel, merely being labelled a "security threat" is a near-conviction in the court of public opinion.

At an anti-asylum seeker march in South Tel Aviv on 6 April 2011, one protest leader claimed that all asylum seekers are potential terrorists, because their dire financial straits - a direct result of the government's refusal to grant them legal work permits - are fertile conditions for recruitment by militant groups who plan to attack Israelis.

"You don't understand: it's a time bomb. Just as they easily enter the country, they can just as easily blow things up. Their socio-economic situation is so bad that for only \$1000 they will blow up buses, they will blow up hundreds, thousands of people," the march leader shouted through a megaphone.²⁹

²⁸ Blue Pilgrimage, 'Feelings for Foreigners' video file <<http://vimeo.com/21138654>> at 17 January 2012.

²⁹ bluepilgrimage (7 April 2011) 'South Tel Aviv is on Fire', video file at <<http://www.youtube.com/watch?v=8n-y24SzbCY>> at 17 January 2012.

Accusations of betrayal

At anti-African rallies in March 2011 and December 2011, Sheen documented virulent hatred for Israelis who support the asylum seekers.

"The people who created this whole situation are Jews who have no understanding of what it means to be a Jew. I call them 'Hellenized,'" one woman told Sheen on camera at the same in March 2011 protest.³⁰ The use here of the term 'Hellenized' is a reference to ancient Jews who practiced a more liberal form of Judaism thousands of years ago. The Jewish holiday of Hannukah commemorates the triumph of the Maccabees, traditional Jews, who waged a war against the Hellenic Jews and their Syrian-Greek allies. According to the Book Maccabees I, the traditional Jews were victorious in battle and subsequently instituted a theocratic regime in the Land of Israel, forcing all Jewish people, including liberal Hellenic Jews, to comply with religious laws. This theocratic regime extended even to forced male genital mutilation.

Referring to liberal Jews as 'Hellenized' is a coded reference to other religious Jews, signaling their belief that liberal Jews should be subdued and forced to accept Torah law as the law of the land.

Our problem is with them. Our struggle must be against them. They want to be nice to non-Jews. They want democracy and human rights. They are against the Bible and all they want is the assimilation of the Jewish people.³¹

Further reasons cited by public against asylum seekers

One of the factors that some Jewish Israelis express as their reason for opposing the presence of asylum seekers in their neighborhoods is that many of them are impoverished. These Israelis complain that the presence of asylum seekers causes their quality of life to deteriorate. It has been claimed that, in the neighborhood of Neve Sha'anan, a previously upscale public square that was devoid of street vendors has turned into an ad hoc flea market. In truth, this neighborhood was a nexus for prostitution and drug use long before most of the asylum seekers arrived.

Architect Sharon Rotbard lives in the adjacent South Tel Aviv neighbourhood of Shapira, and he has authored and published books about the history of the settlement of South Tel Aviv. Rotbard categorically denies that African asylum-seekers have changed the neighbourhood for the worse. According to Rotbard, ever since the early 1940s, when the old Tel Aviv central bus station was built in the heart of the neighbourhood which changed the nature of the area, it has been a hub for transient populations: first, Palestinian workers from the West Bank, then foreign workers from Asia, then asylum-seekers from Africa. Rotbard says he is offended by those that are opposed to the presence of asylum-seekers who would claim that these South Tel Aviv neighbourhoods are unsafe at night.

³⁰ Blue Pilgrimage, 'Feelings for Foreigners' video file <<http://vimeo.com/21138654>> at 17 January 2012.

³¹ Ibid.

Historical perspective: African migration to Israel since the 1960s

It is important to note that although racial discrimination towards African asylum seekers has become a hot-button issue in recent years, since sub-Saharan Africans began to enter Israel in the tens of thousands, the country has a long history of racial discrimination towards asylum seekers.

On 4 April 2011, *Ha'aretz* published an article authored by Sheen about the long history of Israeli antagonism towards African people who Israel's chief rabbinate does not consider to be Jewish. In the late 1960s and early 1970s, a group numbering no more than a few hundred African Americans migrated to Israel. This group, calling itself the African Hebrew Israelites settled in Dimona, a small town in the south of Israel. They claim descent from Jewish people who migrated from Israel to West Africa, from where their own ancestors were kidnapped and brought to the United States as slaves. The African Hebrew Israelite community adheres to a lifestyle that is based upon the laws of the Old Testament, but diverges from orthodox Judaism.

While researching the history of these people in the *Ha'aretz* archives, Sheen found that all of the unfounded accusations that are currently hurled at asylum seekers by Israeli politicians were once used as talking points to delegitimize and dehumanize the African Hebrew Israelites.

Although African Hebrew Israelites were accused by many Jewish Israelis of disproportionately high levels of involvement in criminal activities, an official police spokesperson indicated at the time that the crime rate for African Hebrew Israelite was lower than that of native-born Israelis, according to a *Ha'aretz* article from 1978.

According to a *Ha'aretz* article from 1972, African Hebrew Israelites were also accused of being a front group for hostile foreign forces by then-Member of Knesset Menachem Yadid, who founded and chaired the South Tel Aviv chapter of the Herut party, the forerunner of the Likud party.

African Hebrew Israelites were also systematically denied opportunities to rent apartments, according to a *Ha'aretz* article from 1977. According to one community member that Sheen interviewed in February 2011, African Hebrew Israelite still find it difficult to rent apartments, especially since the publication of the 'rabbis' letter' in December 2010.

It was not until the African Hebrew Israelites had been in the country for 20 years that the Israeli government began to tone down its hostile approach towards them. Today, more than 40 years after they first arrived in the country, most members of the community do not have full Israeli citizenship.

Although the reasons for African Hebrew Israelite immigration to Israel are different than those of most asylum seekers, the common thread that runs through both migration stories is the vilification of non-Jewish African peoples by populist politicians and the racial discrimination they are subjected to in Israel. The fact that much of the exact same xenophobic rhetoric was used against the African Hebrew Israelite 40 years previously, even though that group was smaller than the current wave of African immigration by more than an entire order of magnitude, reveals that anti-African sentiment has deep roots in Israeli

culture.

Article 5(c)(iv) - The right to marriage and choice of spouse

Restricting 'mixed-marriages'

Israel does not offer the option of civil marriage. Concerning matters of marriage and divorce in Israel, Jewish personhood is solely determined according to a religious definition of Judaism. People who are racially or ethnically Jewish but not considered to be Jewish under Orthodox Jewish religious law are not permitted to marry those people who are considered to be Jewish within Israel and must travel abroad to do so. The State of Israel, however, does recognize so-called 'mixed-marriages' of Jewish people and non-Jewish people that are performed in other countries. By not permitting Jewish and non-Jewish people to marry one another in Israel, it is furthering the segregation of the country's Jewish and non-Jewish populations.

It is the right of every person to decide if they want to join in a marriage partnership or not, and it is their right to choose a person who is of the same racial or cultural or religious group as themselves. It is also the right of every person to publicly advocate that others also only marry people of their own racial, cultural or religious group. However, if the state supports the efforts of racial or religious segregationists to effectively inhibit the country's inhabitants' freedom to choose partners from other racial or religious groups, this is constituent to a form of racial discrimination.

Those asylum seekers who have been granted temporary group protection (that is, the significant majority of the population) are not allowed to re-enter Israel if they leave for whatever reason. This means, in effect, that they are unable to marry someone who is not of the same religion either in Israel or abroad.

Article 5(c)(ix) - The right to freedom of peaceful assembly and association

Cancellation of South Sudanese celebration of independence

Israeli authorities have taken actions recently to undermine the cultural events and activities of asylum seeker populations. The South Sudanese Community in Israel planned to hold an event on 9 July 2011 to celebrate South Sudan's declaration of independence. South Sudanese Community members and a representative from the UNHCR office in Israel visited the local police office to apply for a permit to hold the event. The police office withheld a decision regarding the permit for two weeks.

On July 2, the South Sudanese Community was finally granted the permit. However, the police revoked this permit the following day and told the Community members that they would not be able to access another permit unless they met certain provisions, which would cost around 4,000 NIS. The Community could not cover these costs and was forced to move the event to a private venue just days before it was set to take place.

Cancellation of World Refugee Day 2011

The abovementioned incident occurred just weeks after the police revoked a permit that was granted for the World Refugee Day celebrations scheduled for 24 June 2011. The World Refugee Day event would have showcased musical performances and cultural education stalls from Congolese, Sudanese, Eritrean, and Ivorian asylum seekers in Tel Aviv. For months leading up to the event, organizers, including representatives from ARDC, discussed plans with the Tel Aviv police authority. During these discussions, the representatives were told that they would not be required to hire a security engineer to assess the safety of the intended venue. The organizers welcomed this news but were not surprised by it since other events had taken place in the same space within the past year, including an event with around 1,500 attendees, which did not require monitoring by a security engineer. However, less than 48 hours before the event, the Tel Aviv police authority informed the organizers that they could not hold the event as planned without this engineer, which would cost the organizers around 4,000 NIS. Not only were the organizers unable to meet this demand financially, it also would have been extremely difficult to arrange this service at such short notice.

The organizers' appeal to a legal body associated with Israel's Supreme Court was rejected. Both the legal body and the Tel Aviv police continuously reiterated that the decision was based on "security concerns." However, these "security claims" were never raised previously or demonstrated as concerns during previous events at the same location. The timing and inconsistency of the decision suggest that the ongoing security dynamic of the venue was not the true cause behind the decision to disrupt the event. ARDC staff believes that the police may have been acting on the same attitudes that have historically prompted police officers to treat asylum seekers and refugees in an unwarranted and aggressive manner.

Article 5(d) - The protection from racial discrimination regarding civil rights

Detention of asylum seekers

Thousands of asylum seekers are routinely imprisoned after crossing the Egyptian-Israeli border until their status is determined. Following the passage of the Anti-Infiltration Bill through the Knesset in January 2012, we will increasingly witness systematic and prolonged detention of all individuals entering Israel without a permit regardless of their reasons for fleeing their countries of origin.

This practice of detention has led to numerous cases of contested nationality as many arrive without documentation such as passports, ID cards or birth certificates. Eritreans, the largest group of asylum seekers, face a particular challenge as they are frequently identified by authorities as Ethiopians (who are not afforded group protection) because of the long and complex history between these states. Eritreans and Sudanese whose identity is not recognized, do not receive group protection and are therefore not released from prison. Further, contested nationality may arise for other national groups. Anyone whose nationality is contested is not permitted to start the Refugee Status Determination procedure to determine their eligibility for refugee status, which also results in their continued detention.

ARDC submits that the Israeli authorities thus use contested nationalities as a pretext to prevent both release from prison and procedures to review asylum requests.

About 2,000 individuals (including women, children and occasionally minors) are detained at Saharonim facility at Ketziot Prison in the Negev desert near the Egyptian border and another 300 are held at Givon Prison near Tel Aviv. In mid-December 2011, it was announced that this facility will be expanded from accommodating 2,200 detainees to 5,500 detainees and allow for extended periods of detentions.³²

Unaccompanied minors in detention

Despite Israel's statement at paragraph 185 that it encourages the release of minors who came to Israel illegally "from detention and their placement in alternative custody, such as foster families and boarding school", Israel maintains a harsh regime of detention of asylum seekers and the most vulnerable, unaccompanied minors, suffer the greatest. Minors are detained for long periods of time in such desperate conditions that there is high rate of suicide attempts.

The detrimental effect of detention on refugee minors (who have not been charged with any criminal offence) has been witnessed by our colleagues at Assaf – Aid Organization for Refugees and Asylum Seekers in Israel. During a visit to the Matan Detention Facility for youth in September 2011, Assaf reported that in an overly authoritarian manner for low risk detainees who have not committed any crime other than seeking asylum in Israel, 70 youth were overseen by 32 staff members; the prison was heavily protected by a level of barbed wire and fencing that one would expect for a maximum security prison; and all staff (including the social workers) wore uniform.

The most shocking revelation, however, was that between January and September 2011, there had been 19 suicide attempts.

The average period of detention is not supposed to exceed 60 days, however, the reality is that most children are detained in Matan for a period of seven to eight months and at no point do the children know when exactly they will be released. Further, prison officials admitted that while they release youth to 'community guardians' they do not assess their appropriateness and do not monitor the children's progress after they leave their care.

The level of schooling for the children was poor to non-existent. During the allocated 8 hours per day of 'school', the children supposedly learn 'computers, art, sport and Hebrew'. In reality, Assaf witnessed that the children are learning, from the teacher, no more than how to search for songs on You Tube in Tigrinya and how to use Facebook. The staffs' attitude was that since the children are "not going to work in high-tech", it was a futile exercise to provide proper tuition.

³² Elad Benari, 'Netanyahu introduces new plan to deal with infiltrators', *Israel National News*, Israel, 8 December 2011 <<http://www.israelnationalnews.com/News/News.aspx/150514#.TxQZMmMoThU>> at 16 January 2012.

Article 5(e)(i) - The right to work and fairness in employment

Minimal opportunity to secure employment

A significant majority of the estimated 45,000 asylum seekers in Israel today hold a “conditional release” visa in accordance with article 2(A)(5) of the 1952 Entry Into Israel Law. In late November 2010, the Ministry of Interior began to mark such visas with the statement, “This visa is not a working permit.” While the government is not currently taking steps to enforce this policy or fine employers hiring asylum seekers holding such visas until the establishment of the proposed detention facility in the Negev, confusion prevails as the visa neither explicitly denies nor permits asylum seekers to work.³³ As a result, not only are fewer asylum seekers in fact able to secure work, but they are more vulnerable to exploitation, and employers were less likely to respect legal obligations regarding medical and national insurance for these workers. As recently as 16 January 2012, however, Netanyahu publicly announced that businesses hiring illegal workers will be heavily fined in the coming days.³⁴

These actions not only minimize the opportunity to secure employment but further expose asylum seekers to the dangerous working conditions involved in informal and unregulated employment. ARDC’s observations confirm findings by a consultant working with the UNHCR in June/July 2011 that workplace injuries are becoming more common among asylum seekers.³⁵ Due to the heightened difficulty in securing employment, asylum seekers are more reluctant to ask for instructions, while employers do not always provide directions due to translation difficulties and general negligence.

Article 5(e)(iii) - The right to housing

Religious edict against renting properties to non-Jews

In July 2010, residents of South Tel Aviv, possibly persuaded by the rife anti-refugee comments of leading politicians, convinced over two dozen Tel Aviv rabbis (state employees) to draft a letter explicitly calling upon Israelis to not rent apartments to asylum seekers and unlicensed foreign workers.

The phenomenon quickly spread to other cities across the country. In December 2010, hundreds of Israel's leading rabbis, including dozens of chief rabbis of municipalities throughout the country, issued a religious edict instructing Jewish people not to sell homes

³³ On 20 January 2011, the Israeli High Court ruled that until the opening of a “residence center for infiltrators” in the Negev desert near the Egyptian border, there will be no enforcement against, or prosecution of, employers of asylum seekers.

³⁴ Herb Keinon and Lahav Harkov, ‘PM says those hiring illegal workers to be fined’, *Jerusalem Post*, Israel, 16 January 2012 <<http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=253775>> at 16 January 2012.

³⁵ Joanna Mantello and Liv Halperin, “Slipping through the cracks: Disabled and chronically ill asylum seekers and refugees in Israel”, July 2011, p. 18. This unpublished research paper completed by Ms Mantello during her internship with UNHCR and as part of her post-graduate studies.

or even rent apartments to non-Jewish people, including asylum seekers.

Although Israeli media outlets reported the publication of the rabbis' edict, there was no public discourse over the actual contents of the letter. In the letter, the signatories explain their rationale for forbidding property sales and rentals to non-Jewish people.

Religious justifications for the edict

Book of Deuteronomy

To justify their decision, the rabbis quote Biblical passages from the Book of Deuteronomy Chapter 7 Verses 2 and 4. An examination of this Biblical passage -- which these rabbis believe is the living word of their god -- reveals the context upon which they base their religious ruling.

When Yahweh your god brings you to the land that you come to inherit, he will banish other nations... and Yahweh your god will deliver them to you, and you will strike them down. Utterly destroy them, do not sign any pacts with them, show them no mercy. And do not marry them, do not give your daughters to their sons, and do not take their daughters for your sons... Because you are a holy people to Yahweh your god, he chose you to be his special people from all the nations in the world.

In modern English, this Biblical passage calls for the ethnic cleaning of the Land of Israel of all people who are not Jewish.

Biblical interpretation

It is possible to interpret Biblical scripture in a myriad of ways. Certainly there are rabbis who would say that this passage refers to historical events that occurred over 3,000 years ago, and therefore has no relevance to the here and now.

But that is not what these leading rabbis on the public payroll are saying. In fact, what they are saying is exactly the opposite: that these Biblical injunctions are still in effect, and that Jewish people must follow them to the letter of the law, that Jewish people may not sign pacts with non-Jewish people, that Jewish people must show non-Jewish people no mercy.

In their letter, the rabbis make explicit their reasons for issuing the edict: to ensure that the presence of non-Jewish people in the land is only temporary; to prevent the possibility of marriages between Jewish people and non-Jewish people; to prevent the possibility of acculturation - the transfer of culture - from non-Jewish people to Jewish people.

Book of Numbers Chapter 33

The letter goes on to cite another passage from the Bible to bolster its 'argument' that Jewish people must not sell or rent to non-Jewish people. The rabbis reference the Book of Numbers Chapter 33 Verse 55, which is very similar in content to the first Biblical reference:

And God said to Moses... Tell the people of Israel, when you cross the Jordan into the Land of Canaan, uproot all of the inhabitants of the land... and live there, because I have given the land to you to inherit... If you do not uproot the inhabitants of the land, then those that you permit to remain... will make you miserable in the land in which you live.

Again, the rabbis make reference to an explicit call to ethnically cleanse the country as if it is still in effect, and warn their constituents that to rent an apartment to a non-Jewish person is an act of hostility to their Jewish neighbors, because the Bible proclaims that any non-Jewish people present in the land "will make you miserable".

The rabbis sum up their letter by calling upon their followers to socially and economically boycott any person who, despite their urgent warnings, continues to rent property to non-Jewish people.

The effect of the edict

Those who signed were not only chief rabbis of religious communities and West Bank settlements. The list of signatories includes the chief rabbis of many cities whose populations are overwhelmingly secular in orientation: Afula, Ashdod, Bat Yam, Carmiel, Eilat, Herzilya, Gadera, Holon, Kiryat Gat, Kiryat Motskin, Metula, Nahariya, Nazareth, Pardes Hannah, Ra'anana, Rishon Lezion, and Rosh Ha'ayin.

Immediately after the publication of the rabbis' letter, many asylum seekers were summarily ejected from their homes without proper notice or any just cause. In the middle of the winter, ARDC documented that many asylum seekers families had their electrical heating and hot water services completely cut off by landlords who preferred to comply with the rabbis' letter than with legally binding rental contracts. Needless to say, as far as ARDC is aware, none of the landlords who violated the terms of their rental agreements have suffered from any legal repercussions as a result of their actions.

In addition to the refugee community, ARDC itself also suffered as a result of the rabbinical decree. For a period of six months in 2011, ARDC (forced to relocate office for financial reasons) was unable to find a suitable office in south Tel Aviv as several potential landlords expressed their unwillingness to rent to an organization supporting African refugees. In February 2011, one ideal premise was found and following negotiations with the landlord was on the verge of signing the lease agreement. However, the landlord reneged on the agreement at the last minute causing considerable inconvenience to the organization. No reasonable explanation was provided despite the fact that the building had been vacant for an extended period of time. During our initial introduction, the landlord expressed reservations about renting the building to a refugee organization, however, was careful not to cite this as the reason for withdrawing from the agreement.

The rabbis' letter has clearly made it much more difficult for non-Jewish people in general, and for asylum seekers in particular, to secure housing in Israel ever since.

Article 5(e)(iv) - The right to health, medical care, and social services

Access to basic medical assistance

There is general lack of access to adequate care and of attention for a range of medical conditions and situations for asylum seekers

Medical emergencies - The state is obligated to provide medical treatment in life threatening situations yet, in ARDC's experience, this obligation is sometimes interpreted strictly in the case of asylum seekers. By way of example, in mid-2010, a Sudanese man arrived in a taxi to ARDC's office, catheter bags in hand, just hours after major surgery to remove five bullets from his abdomen (sustained while crossing the Egyptian-Israeli border). While the individual had received emergency medical care in Be'er Sheva, he received minimal post-op care from the hospital, was highly disorientated and distressed and was dependent upon the care and assistance of NGOs and friends during his recovery. As noted by the UNHCR consultant, the man was put forward by the UNHCR for resettlement after seven months of trying unsuccessfully to access medical and rehabilitative care. The applicant's primary criteria for resettlement was listed as "legal and physical protection needs", and his secondary criteria was listed as "medical needs". The case was reportedly the first submitted by UNHCR Israel involving a medical situation categorized as "emergency".³⁶

Additionally, the US Human Rights Report for 2010 contains statements from ARDC and our partner organizations including the following statement by Physicians for Human Rights:

... [About] one-third of families with children who are not legal residents were able to purchase medical insurance. Although the law provides for emergency medical care for every resident, 16 migrant workers and asylum seekers reportedly stated that they were denied access to emergency medical treatment in hospitals between September 2009 and September [2010] due to lack of health insurance and inability to pay the required fees.³⁷

Pregnancy and victims of gender based violence – ARDC operates a transitional shelter in Tel Aviv for homeless, pregnant women in the refugee community. These women receive almost no support from governmental institutions when they are released from detention. Yet, an estimated 80 to 90 percent of the women who enter our facility carry unwanted pregnancies as a result of rape by smugglers in Bedouin holding camps in the Egyptian Sinai desert during their flight to Israel. While being held for the purpose of ransom (which can reach up to USD\$20,000), all women are tortured and systematically abused and raped. In one of the worst cases ARDC has encountered, a Nigerian woman previously in our transitional shelter was held captive and repeatedly raped and tortured for a period of 15 months.

As described above, all people who are unauthorized to enter Israel such as asylum seekers are considered by the state as "infiltrators," detained for an indefinite period of time and subject to deportation. In detention, asylum seekers are medically screened and their nationality is determined. When the identification procedure is completed, they are released. However, while in detention there is an inadequate identification and referral process and insufficient treatment of victims of rape. Additionally, there is limited access to women's health services and urgent treatment is reportedly delayed. Medical specialists such as gynaecologists are not based in the detention centers, thus individuals must be referred to regional medical centers for all specialized services, which usually takes some time and requires special arrangements with the Israeli Prison Service.

³⁶ Mantello and Halperin, p. 29.

³⁷ US Bureau of Democracy, Human rights and Labor, *2010 Human Rights Report: Israel and the occupied territories*, 8 April 2011, <<http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154463.htm>>

As conditions in the Sinai for asylum seekers have deteriorated considerably over the past year, the state's systems to accommodate the changing nature and increasing severity of the victims' medical and psychological needs have not been correspondingly improved. For instance, while some women are released from the detention center shortly following confirmation of their pregnancies, a few women were released at a later stage which was found to be too late to terminate an unwanted pregnancy resulting from rape. This situation intensifies the women's emotional and psychological distress. In cases in which a woman has fled to Israel with her husband or partner, the pregnancy may lead to domestic violence, placing the women in physical danger and jeopardizing the welfare of the infant. In June 2011, an Eritrean asylum seeker reportedly murdered his wife and her baby and then committed suicide after he could no longer tolerate seeing the child who had been fathered by one of the smugglers.³⁸

When the Israeli Prison Service releases women, it drops these women off in the center of Tel Aviv without any further support. The refugee women face homelessness and further exposure to sexual assault on the streets. Additionally, many of these women must provide for their children without the assistance of husbands, communities and family members who remain in detention or have been lost or distanced during the women's journeys to Israel or remain in detention.

Nevertheless, asylum seeker women receive some pre- and post-natal services from municipal institutions. For instance, Tipat-Halav is a nurse-run clinic funded by the Tel Aviv municipality that provides some pregnancy and infant-care services. Additionally, the Liss (Ichilov) Women's Hospital and Wolfson Hospital care for women though only during emergencies, abortions and labor. Asylum seeker women are charged approximately 5,000 NIS (US\$1,400) to deliver in hospital. However, ARDC has observed that in practice hospitals typically do not pursue unpaid bills from these asylum seeker mothers.

ARDC also draws the Committee's attention to the US Human Rights Report for 2010, which stated that "[a]uthorities detained over 200 women and children in the Saharonim prison in cloth tents, with limited education services provided to the children for the detention period and insufficient health and medical treatment..."³⁹

HIV/AIDS – The consultant working with the UNHCR estimates that there are 300 refugees and asylum seekers with HIV and AIDS currently living in Israel.⁴⁰ Yet, the State of Israel does not provide these individuals with any treatment. Upon being diagnosed with HIV, an individual must do CD4 and viral load tests every three months to track the progression of the virus. However, such tests are neither practically nor financially accessible to asylum seekers due to prohibitive costs and numerous administrative challenges. As a result, the majority of HIV positive individuals are not being regularly tested or treated.

Cancer – The consultant working with the UNHCR reports that asylum seekers are not entitled to cancer treatments (by private insurance as well as standard insurance) such as

³⁸ Minna Rozen, 'Some women are born refugees: Remember your Eritrean sisters', +972, 23 June 2011.

<<http://972mag.com/remember-your-eritrean-sisters-some-women-are-born-refugees/>> at 17 January 2012.

³⁹ US Bureau of Democracy, Human rights and Labor, *2010 Human Rights Report: Israel and the occupied territories*, 8 April 2011. Available at <<http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154463.htm>>.

⁴⁰ Mantello and Halperin, p. 15

chemotherapy or radiation (except for emergency cases) and that the vast majority of cases remain untreated.⁴¹

Mental disabilities – There is a wide range of mental health disorders in the asylum seeker community including schizophrenia, severe depression and post-traumatic stress disorder. Many of these disorders may have been caused or exacerbated by abuse experienced in the Sinai, or by persecution or other experiences they faced in their country of origin. The UNHCR consultant observes that, in contrast to individuals with physical emergencies, individuals who experience mental emergencies do not necessarily receive the required medical treatment or hospitalization when they arrive to an emergency room. The consultant reports a number of cases in which asylum seekers experiencing a severe psychotic episode have been refused admittance, had their hospital stay prematurely shortened or have been released without adequate follow up treatment or observation.⁴² These cases may have resulted from language difficulties and the lack of proper interpretation at the receiving medical centers. In any case, these conditions further endanger the patient and the general public.

Concluding Observations of the Committee on Economic, Social and Cultural Rights

ARDC takes this opportunity to draw CERD's attention to the recent Concluding Observations of the Committee on Economic, Social and Cultural Rights in its review of Israel and in particular paragraph 33, in which it recommended that Israel "extend the coverage under the National Health Insurance Law to persons not in possession of a permanent residency permit, so as to ensure universal access to affordable primary health care". No action by the state has been taken to date to implement this recommendation.

Article 5(e)(v) - The right to education

Discrimination in Eilat education system

At paragraph 755, the state provides that "children of asylum seekers and other infiltrators are ... integrated into Israel's educational system". Children of asylum seekers are integrated into the state's education system to varying degrees with the worst known situation occurring in Eilat (the southern tip of Israel) where Israeli and asylum seeker children are separated. Approximately 50 Sudanese and Eritrean children have been sent to an abandoned and unsafe facility. The premise is littered with pipes, nails, exposed electrical wires, broken glass, scrap metal and garbage.

Nor do the children receive adequate schooling. The teachers have no teaching qualifications or experience and the children's studies and activities are not guided by an orderly curriculum. Additionally, no one is monitoring the children's attendance rate or progress.

⁴¹ Mantello and Halperin, p. 16

⁴² Mantello and Halperin, p. 19

In response to this discriminatory treatment and the state's refusal to enroll the children in the state-run school, in July 2011 a petition in the Be'er Sheva District Court against the Municipality of Eilat and the Ministry of Education with the assistance of Tel Aviv University's Refugee Rights Clinic and the Hotline for Migrant Workers.⁴³ It is claimed that these authorities are discriminating against the refugee children on a racial basis. At the time of this application, the case was still pending and the situation persists.

Recommendations

In order to comply with ICERD, ARDC recommends that the Committee make the following recommendations to the Government of Israel:

- To develop in partnership with Israel human rights organizations and the asylum seeker and refugee community a comprehensive asylum policy and implementing legislation to introduce the state's obligations under the 1951 Refugee Convention into domestic law;
- To repeal the Anti-Infiltration Law, or at the very least, amend the legislation so that it does not apply to asylum seekers;
- To eliminate the administrative detention of asylum seekers and minors;
- To efficiently and fairly determine the claims of all asylum seekers by devoting resources and introducing procedural fairness;
- To grant those asylum seekers holding 'conditional release visas' the right to work and access state-sponsored welfare, medical care and social services;
- To cease incorrectly and deliberately referring to asylum seekers as 'infiltrators' and 'economic migrants';
- To launch a media campaign to assert that asylum seekers and refugees are not criminals but human beings deserving of human rights, to undo at least some of the damage that has been done by anti-asylum seeker campaigns; and
- To ensure that media outlets fulfill their duty to be socially responsible, fair and accurate through presenting balanced reports that refrain from racial stereotypes and generalizations.

⁴³ A copy of the petition (29883-07-11) can be found at http://www.hotline.org.il/hebrew/pdf/Eilat_education_petition_072011.pdf > at 28 January 2012 (in Hebrew).