Immigration to Israel: An Inclusion/Exclusion Spectrum in a Non-Immigration State

Tally Kritzman-Amir[•]

Introduction

The Israeli immigration, asylum and citizenship regime was formed in a staggered, patchwork way, over a period of time stretching from the early days of the State of Israel to recent years. The result is that the legal basis of the Israeli immigration, asylum and citizenship regime is uncodified, but rather can be found in several statutes, dozens of regulations and procedures, and international law obligations, which are often incoherent and inconsistent. The legal structure of Israeli immigration law conveys its self-perception as a non-immigration state: a nation state which is not welcoming to persons who are not a part of the national community.

At the heart of the immigration regime stands the categorization of migrants and nationals to essentializing categories, based on their nationality, the purpose and manner of their arrival to Israel and other characteristics. These categories can be located along a spectrum of inclusion/exclusion, and maintain strong connections with corresponding categories of the citizenship. On the inclusion end of the spectrum are Jewish migrants and their relatives and descendants, who, under Israel's unique jus sanguinis citizenship regime, benefit from a significant preference in the ability to immigrate and in the acquisition of citizenship and access to the Israeli welfare state. On the other far end of the spectrum, on the exclusion side, are Palestinians and nationals of some of the Arab countries, who are almost categorically denied of any possibility of immigration to Palestinians and citizens of several other Arab countries.[1] This exclusionary policy

• Visiting Assistant Professor, Boston University School of Law; Visiting Associate Professor, Harvard University Department of Sociology

[1] Nationality and Entry into Israel (Temporary Order) Law, 5763-2003, SH 1901 p. 544. *See also* HCJ 7052/03 Adalah—The Legal Center for Arab Minority Rights in Israel v. Minister of Interior, 61(2) PD 202 (2006).

is correlative to different laws and policies which allow for the relatively easy annulment of the status of Palestinian permanent residents and citizens.[2] Along that spectrum, between these two extremes, and closer to the inclusion side, is a category of migrant workers, who are allowed to temporarily migrate to Israel, without a possibility to naturalize, and with a partial access to rights and benefits. Closer to the exclusionary end of the spectrum are also refugees and people in refugee-like situations, who are also only afforded a temporary and often volatile status is Israel, and constantly subject to removal attempts.

Legal issues concerning immigration and citizenship are repeatedly brought before the Israeli courts, including the Israeli Supreme Court. Often the Court exhibited judicial activism protecting some of the fundamental rights of migrants in Israel, recognizing that their human rights are protected under the basic laws. Some of the protected rights are the right to non-refoulement;[3] the right to freedom from arbitrary detention;[4] the right to family life;[5] the right to property;[6] the right to non-segregated public education;[7] certain employment-related rights;[8] and certain

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[2] *See, e.g.*, Nationality Law, 5712-1952, SH No. 95 p. 146, art. 11; Entry to Israel Law, 5712-1952, SH No. 111 p. 35, art 11A.

[3] HCJ 5448/94 *Al Tai V Minister of Interior*, 49(3) PD 843 (1995).

[4] HCJ 7146/12 Adam v. Knesset, 64(2) PD 717 (2013) (translated in https://versa.cardozo.yu.edu/opinions/adam-v-knesset-summary); HCJ 7385/13 Eitan – Israeli Immigration Policy Center v. The Israeli Government (Sept. 22, 2014); HCJ 8665/14 Desta v. Minister of Interior (Aug. 11, 2015) (translated inhttps://versa.cardozo.yu.edu/opinions/desta-v-knesset).

[5] HCJ 7052/03 Adalah Legal Centre for Arab Minority Rights in Israel v. Minister of Interior 61(2) PD 202, 338 (2006); HCJ 466/07 MK Galon v. The Legal Advisor to the Government, 65(2) PD 44 (2012); HCJ 11437/05 Kav La'Oved v. Ministry of Interior (Apr. 13, 2011); Admin. Pet. (Jer.) 8717/08 Bayu v. Ministry of Interior (2009), Nevo Legal Database (by subscription).

[6] HCJ 2293/17 Tsegay Gresgeher v. Knesset (Apr. 23, 2020), https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts\17\930\022\v53&fileName=17022930.V53&type=2.

[7] AdminA 6212/12 Municipality of Eilat v. Ministry of Education (Aug. 27, 2012).

[8] HCJ 4542/02 Kav LaOved Worker's Hotline v. Government of Israel (Mar. 30, 2006) (translated in https://versa.cardozo.yu.edu/opinions/kav-laoved-worker%E2%80%99s-hotline-v-government-israel); HCJ 11437/05 Kav La'Oved, *supra* note 5. *Cf.* HCJ 10843/04 Hotline for Migrant Workers v. Government of Israel (Sept. 19, 2007) (translated in https://versa.cardozo.yu.edu/opinions/hotline-migrant-workers-v-government-israel); HCJ 1678/07 Gloten v. National Labor Court (Mar. 18, 2013).

procedural rights.[9] The Court upheld these rights of migrants despite massive public criticism and, in some occasions, threats to override its decisions through constitutional amendments, including an override clause.[10] Nevertheless, the government enjoys broad and almost untamed discretion in the making of policy determinations and in the operating of the immigration, asylum and citizenship regime, in which the Court is generally reluctant to intervene. The Court's interventions did not challenge the validity of the above-mentioned spectrum, and often times reinforced it.[11] The premise of the entitlement of Jewish migrants and their relatives to enter Israel and receive status in it was virtually uncontested, as was the inferior right to enter and stay in Israel of the members of the other categories. This chapter will survey the different categories along the spectrum and their treatment by the Court.

Law of Return Migration and Israel's Jus Sanguinis Citizenship Regime

The inclusive side of the spectrum is legally grounded in one of the fundamental component of Israel's immigration laws: the Law of Return.[12] the general premise of this law is that "Every Jew has the right to come to this country as an *oleh* [Jewish immigrant – t.k.a]."[13] This law is conceived as a part of the raison d'etre of the State of Israel, and as corresponding to the nature of Israel as a Jewish and democratic state, as proclaimed in its declaration of independence[14] and in Israel's basic laws. In the Israeli parliament,[15] courts[16] and policy debates,[17] Israel is

[9] AdminA 1038/08 Israel v. Ghebits (Aug. 11, 2009).
[10] Rivka Weill & Tally Kritzman-Amir, *Between Institutional Survival and Human Rights Protection: Adjudicating Landmark Cases of African Undocumented Migrants in Israel in a Comparative and International Context*, 41 U. PENN. J. INT'L L. 43 (2019).
[11] HCJ 758/88 Kendel v. The Minister of Interior, 46(4) PD 505, 520, 525-528 (); HCJ 3403/97 Ankin v. Minister of Interior, 51(4) PD 522 (1997).
[12] Law of Return, 5710-1950, SH No. 51 p. 159.
[13] *Id.*art. 1.
[14] Declaration of the Establishment of the State of Israel, 1 L.S.I. 3 (1948).
[15] *See, e.g.*, Discussion Following the Second and Third Vote on the Law of Return in the Israeli Parliament, 12 DIVREY HAKNESSET 3167 (Aug. 27, 1952).
[16] *See e.g.*, AdminA. 1644/05 Frida v. Ministry of Interior, (June 29, 2005).
[17] On the connection between being an Israeli state and maintaining a Jewish majority in Israel, see the ADVISORY COMMITTEE ON ISRAEL'S IMMIGRATION POLICY, INTERIM REPORT 3-6 (Feb. 7, 2006) [in Hebrew] (on file with author). This committee was appointed by the former minister of interior and headed by Prof. Amnon Rubinstein.

perceived as an "*aliyah*" state – a state of Jewish return – rather than an immigration state. This notion is also anchored in the recent Basic Law: Israel as the Nation-State of the Jewish People.[18]

This *telos* of the state of Israel is materialized through massive *aliya* operations, in which Israel used its diplomatic and military power to bring Jewish communities to Israel,[19] and through intensive integration efforts, which include robust assistance to the *olim*.[20] The scope of the category of those who are eligible for a right of return was debated in the court,[21] but eventually the 1970 amendment to the Law of Return determined the right to include a broad category of descendants of Jews and their family members, which was supplemented with several procedures under which additional relatives were allowed to migrate to Israel.[22] Perhaps inadvertently, through this amendment tens of thousands of persons who are not considered Jewish under Jewish religious law or according to their own self-definition could immigrate to Israel, most of whom came during the 1990s from the Former Soviet Union. According to some studies, these individuals serve as a "demographic counter-force" to the Palestinian minority in Israel.[23] This is especially true since many of them were encouraged to convert, and given the Israeli refusal to recognize the right of return of Palestinian refugees.[24] The morality of the Law of Return – the inclusion of people loosely tied to the Jewish nation alongside the exclusion of indigenous Palestinians, has been the core of numerous scholarly debates.[25] As opposed to the blanket inclusion offered to those who are deemed eligible under the law of return, under the Israeli

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[18] Art. 5.

[19] One of the most contested operation brought to Israel the Falas Mura – descendants of Beta Israel communities who are not considered as Jewish according to Jewish Halacha. *See* Jeremy Sharon, *Gov't Okays Immigration of 2,000 Falash Mura from Ethiopia by End of 2020*, JERUSALEM POST (Sept. 10 2020), https://www.jpost.com/israel-news/govt-okays-immigration-of-2000-falash-mura-from-ethiopia-by-end-of-2020-641701.

[20] Support includes language instruction, mortgage assistance, tuition assistance, job placement and training and more. *See* Rebeca Raijman, *A Warm Welcome for Some: Israel Embraces Immigration of Jewish Diaspora, Sharply Restricts Labor Migrants and Asylum Seekers*, MPI (June 5, 2020), https://www.migrationpolicy.org/article/israel-law-of-return-asylum-labor-migration.

[21] HCJ 72/62 Rufaizen v. Minister of Interior, 16 PD 2428 (1962); HCJ 56/68 Shalit v. Minister of Interior, 23(2) PD 477 (1970).

[22] Law of Return, 5710-1950, arts. 4A-4B, SH No. 51 p. 159. *See also, e.g.*, Administration of Border Crossings, Population and Immigration, Procedure 5.2.0027 for Handling Status of Great-Grandson of a Jew (Dec. 26, 2013), https://www.gov.il/he/departments/policies/provision_grandson_jewish_status_2013

[23] Ian Lustick, *Israel as a Non-Arab State: The Political Implications of Mass Immigration of Non-Jews*, 53 MID. E. J. 417 (1999).

[24] *See, e.g.*, Chaim Ganz, *The Palestinian Right of Return and the Justice of Zionism*, 5 THEORETICAL INQUIRIES IN L. 269 (2004); Alon Harel, *Whose Home Is It? Reflections on the Palestinians' Interest in Return*, 5 THEORETICAL INQUIRIES IN L. 333 (2004).

[25] *See e.g.*, Chaim Ganz, *Nationalist Priorities and Restrictions in Immigration: The Case of Israel*, 2 LAW & ETHICS HUM. RTS. 1 (2008).

immigration regime, non-Jews do not hold a right to immigrate to Israel, and their entry to the state is restricted and regularized through the Entry to Israel Law.[26]

Under the corresponding naturalization norms, the Nationality Law, citizenship is granted automatically to those who immigrate to Israel under the Law of Return, whereas others have an extremely limited ability to acquire citizenship.[27] For many years, non-Jews who were residing in Israel prior its independence and their descendants were unable to acquire citizenship,[28] since those who fled Israel during the 1948 war[29] were ineligible for citizenship. The ability of stateless persons to acquire citizenship in Israel,[30] as per Israel's commitment under international law,[31] was very limited in the Nationality Law itself, until regulations on acquisition of citizenship for stateless persons were set.[32] Naturalization efforts encounter difficulties, because despite the efforts of courts to facilitate naturalization,[33] the process is governed by constantly changing, non-transparent,[34] and exclusionary regulations.[35]

II. Migration for Employment

[26] Entry into Israel Law, 5712-1952, SH No. 111 p. 354.
[27] Law of Return, *supra* note 12, art. 2.
[28] *Id.* arts. 3- 3A.
[29] The question of whether the Palestinians fled Israel voluntarily or whether they were forced to leave by the State of Israel has been well-debated by historians and falls beyond the scope of this paper. *See* BENNY MORRIS, THE BIRTH OF THE PALESTINIAN REFUGEE PROBLEM, 1947-1949 (1989).
[30] Law of Return, *supra* note 3, art. 4A.
[31] Israel is a party to the 1961 Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175.
[32] Administration of Border Crossings, Population and Immigration, Procedure 4.3.001 for Handling Citizenship on Account of Birth and Residency, art. 4A (Updated November 1, 2020). See also AdminA (TA) 2887/05 Elkasayev v. Minister of Interior Affairs, (Jan. 29, 2007), the court ordered the Ministry of Interior to enact regulations on the process through which stateless persons can acquire citizenship in Israel.
[33] On the courts` attempts to simplify and shorten the naturalization process for family members of citizens, see HCJ 3648/97 Stamka v. Minister of Interior, 53(2) PD 728 (1999); AdminA 4614/05 Oren v. Minister of Interior (Mar. 16, 2006). *See also* Admin. Pet. (TA) 2790/04 Rozenberg v. Minister of Interior (Dec. 29, 2004)
[34] Admin. Pet. (Jer.) 530/07 Association for Civil Rights in Israel v. Ministry of Interior (Jan. 6, 2008).
[35] *See, e.g.*, Administration of Border Crossings, Population and Immigration, Procedure on Treatment of Status of Partners of Israeli Citizens, Including Same-Sex Partners, (Oct. 7, 2013), https://www.gov.il/he/departments/policies/israelis_couples_status_procedure.

Shortly after Israel occupied of the West Bank and Gaza in 1967 it allowed migration for employment of Palestinian for political and economic reasons. At the time, the arrival of Palestinians to Israel was perceived as a good way to de-radicalize the Palestinian resistance to the occupation, strengthen the economy of the Palestinian and the Israeli markets,[36] and avoid competition from Palestinian, Jordanian and Egyptian markets.[37] Palestinians were, however, subjected to various restrictions, including a clear security record, an ability to demonstrate that their job would not be filled by Israelis, and a restriction on the ability to stay in Israel overnight, rendering them frontier workers, who had to go back and forth from their homes in the Territories to their workplaces in Israel.[38] Palestinians from the West Bank and Gaza worked in the stratified Israeli labor market in low paying, low skilled jobs – which are sometimes also termed "dirty, difficult and dangerous" (DDD) jobs, mainly in construction and agriculture.[39] These sectors attract only few Jewish Israeli workers and carry a negative social stigma, despite their connection to the Zionist vision of "making the desert bloom" and developing Israel.[40] While many of the Palestinian frontier workers' entry and stay in Israel was documented, many others were undocumented.[41]

When the first Palestinian uprising against the Israeli occupation, the Intifada, started in 1987, Israel imposed closures on the West Bank and Gaza. Palestinian migrant workers became less available and their arrival to Israel less reliable, especially after the Iraqi invasion of Kuwait

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[36] Guy Mundlak, *Power-Breaking or Power-Entrenching Law? The Regulation of Palestinian Workers in Israel*, 20 COMP. LABOR L. & POL'Y J. 569, 575-77 (1999).
[37] David V. Bartram, *Foreign Workers in Israel: History and Theory*, 32 INT'L MIGRATION REV. 303, 305-06 (1998).
[38] Mundlak, *supra* note 36, at 579. Requirement to return to the Palestinian territories was lifted during the Coronavirus pandemic.
[39] Bartram, *supra* note 37, at 305-08.
[40] Alan George, *"Making the Desert Bloom" A Myth Examined*, 8 J. PALESTINE STUD. 88 (1979).
[41] Bartram, *supra* note 37, at 306.

and the Gulf War.[42] As massive Jewish migration arrived to Israel in the early 1990s from the Former Soviet Union, the construction sector needed to respond to the housing need of the state's growing population, but was unable to recruit workers from either the native population or the newcomers to replace the Palestinian construction workers.[43] Therefore, the construction sector demanded that the Israeli government allows migration for employment in the sector, through intense lobbyism, as well as through a petition to the Israeli High Court of Justice.[44] The Israeli government was quick to approve the migration for employment without litigating the case.[45]

Thus, in the 1990s, migration for employment partially substituted the frontier employment of Palestinians to some extent, with migrant workers working in the same sectors formerly dominated by the Palestinian workers – construction and agriculture – as Palestinian workers continued to work in them as well.[46] Additional migrant workers were employed in the industry sector, while others were employed in an emerging sector of private care workers,[47] which currently employ most of the migrant workers.[48] Migration for employment institutionalized and has become wide spread[49] and a semi-permanent feature of the Israeli labor market.[50] To support the efforts to recruit migrant workers and provide certain protections to them, Israel signed on to bilateral agreements with some of their countries of origin.[51] The documented effects of the

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[42] Mundlak, *supra* note 36, at 570 (1999); Bartram, *supra* note 37, at 311-12.
Bartram, *supra* note 37, at 309-11.
[44] *Id.* at 313-314.
[45] *Id.*
[46] Mundlak, *supra* note 36, at 586-87.
[47] Hila Shamir, *Migrant Care Workers in Israel: Between Family, Market and State*, 28 ISR. STUD. REV. 192 (2013).
[48] Raijman, *supra* note 20.
[49] The ratio of migrant workers in the Israeli labor force is roughly double their ratio in other OECD countries. SARIT COHEN-GOLDNER, THE IMPACT OF FOREIGN WORKERS ON EMPLOYMENT AND WAGES OF ISRAELI WORKERS (2019), https://www.idc.ac.il/he/research/aiep/documents/impact-of-foreign-workers-on-employment-and-wages-of-israeli-workers.pdf
[50] CA 3375/99 Exelrad v. Tsur Shamir Insurance Company Ltd., 54(4) PD 450, 457-59 (2000).
[51] Yuval Livnat, Israel's Bilateral Agreements with Source Countries of Migrant Workers: What Is Covered, What Is Ignored and Why? (Dec. 17, 2019) (unpublished manuscript), https://ssrn.com/abstract=3523087.

bilateral agreements show that the impact is mixed: on the one hand, for many recruitment fees decreased, but on the other hand, it seems that the employment conditions of many of them continued to be quite harsh.[52]

For the most part, migrant workers were only allowed to stay in Israel in a temporary manner, for a maximum duration of 63 months.[53] Extensions beyond that timeframe were mostly only granted for employees in the care sector, at the special request of the employer.[54] Yet even when migrant workers remained in Israel for many years, they were not found to be eligible for naturalization by the Population and Immigration Authority or by the Court.[55]

The employment schemes of migrant workers were such that rendered them particularly susceptible to exploitation. Initially, employment was structured through the "binding arrangement", under which each employee's visa designed him or her to work for a specific employer. This meant that migrant workers who changed employers were in violation of the terms of their visa, irrespective of the reasons for doing so, and thus risk detention and deportation. This practice was found to be unconstitutional by the High Court of Justice,[56] as it resulted in the commodification of the migrant workers and in violating their constitutional right to dignity,

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[52] REBECA RAIJMAN & NONNA KUSHNIROVICH, THE EFFICIENCY OF BILATERAL AGREEMENTS: RECRUITMENT, ACCESS TO RIGHTS, LIVING AND EMPLOYMENT CONDITIONS OF MIGRANT WORKERS IN AGRICULTURE, CONSTRUCTION AND NURSING IN ISRAEL, 2011-2018 (2019), https://www.gov.il/BlobFolder/reports/efficiency_of_bileteral_agreements/he/CIMI_BilateralAgreementsBooklet_HEB_int_2019.pdf (2019).

[53] Entry to Israel Law, *supra* note 2, art. 3A.

[54] *Id.* art. 3A(BA). *See also* Procedure for Handling Requests for Extending B/1 Permits in the Care Sector for Special and Exceptional Humanitarian Reasons (Feb. 4, 2020), https://www.gov.il/he/departments/policies/israelis_couples_status_procedure.

[55] In 2010 the Israeli Supreme Court Rejected a petition for residency of a migrant worker who worked in Israel since 1989. See: AdminA. 8947/08 Amon v. Minister of Interior (July 1, 2010); Admin. Pet. 1708/07 Amon v. Minister of Interior (Sept. 25, 2008). However, in one case, the court instructed the ministry of interior to grant residency status to a migrant worker who had a unique bond with the family of the man she cared for, after he had passed away. Admin. Pet. (Jer.) 42184-07-19 Mendel v. Population and Immigration Authority (Jan. 27, 2020).

[56] HCJ 4542/02 Kav LaOved Worker's Hotline v. Government of Israel (Mar. 30, 2006), (translated in https://versa.cardozo.yu.edu/opinions/kav-laoved-worker%E2%80%99s-hotline-v-government-israel).

though the High Court of Justice nevertheless allowed it in the context of particular circumstances of certain bilateral employment arrangements.[57] Currently employment of migrant workers is facilitated through private manpower agencies, and though formally the agencies can allow employees to leave their employer to be hired by a different employer, the business model of the agencies is structured in a manner that dis-incentivizes agencies to refer an employee to several employers, rendering this formal possibility virtually meaningless.[58] In addition, significant groups of migrant workers, such as many of the workers in the care sector and Palestinian workers are still bound to their employers.[59] Finally, though the status of employee seemed universally applicable under Israeli labor law, Court decisions carved migrant workers as a special category of employees, which is not eligible, for example, for overtime compensation, despite the fact that many migrant workers are required to work around the clock.[60]

As undocumented migration for employment was on the rise, Israel launched several detention and deportation campaigns aiming to target this phenomenon, but only managing to scratch the surface.[61] Despite ambitious deportation target numbers, undocumented migration for employment institutionalized in Israel, rather than eradicated. Deportations campaigns terrorized the migrant forced them to adopt different strategies to evade the enforcement authorities, some of which came with a heavy price in terms of their dignity,[62] and at most initiated a "revolving door"

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[57] HCJ 10843/04 Hotline for Migrant Workers v. Government of Israel (Sept. 19, 2007) (translated in https://versa.cardozo.yu.edu/opinions/hotline-migrant-workers-v-government-israel).

[58] Agencies are legally allowed to charge recruitment fees from the migrant workers. Tally Kritzman-Amir, *Narratives and Social Change in Supreme Court Decisions on the Permit Regime of Migrant Workers*, 18 LAW & BUS. 509 (2014) [In Hebrew].

[59] AN ALTERNATIVE ANTI-TRAFFICKING ACTION PLAN: A PROPOSED MODEL BASED ON A LABOR APPROACH TO TRAFFICKING 29-33 (Hila Shamir & Maayan Niezna eds., 2020), https://5b95acaf-0ac7-4d09-b46a-a0f0163d0c70.filesusr.com/ugd/11e1f0_881bce3515e64a0892eb759b23bc9745.pdf.

[60] HCJ 1678/07 Gloten, *supra* note 8.

[61] Sarah Willen, *Toward a Critical Phenomenology of "Illegality": State Power, Criminalization, and Abjectivity Among Undocumented Migrant Workers in Tel Aviv, Israel*, 45 INT'L MIGRATION 8 (2007).

[62] On the effects of the deportation campaign on the dignity of migrant workers see SARAH WILLEN, FIGHTING FOR DIGNITY: MIGRANT LIVES AT ISRAEL'S MARGINS (2019)

phenomenon, in which migrant workers were brought into the country while others were deported.[63]

Migrant workers were not fully included in the Israeli welfare state. While legislation and regulations guaranteed them access to housing[64] and required employers to provide health insurance to them,[65] enforcement was minimal and often incidental to enforcement of undocumented employment. In addition, the private health insurance was inferior to the allegedly-universal health insurance provided to residents and citizens (but not to migrant workers).[66] Migrant workers were only eligible to receive some of the social security benefits.

The right of migrant workers to family life was subject to various restrictions, in an effort to prevent migrant workers from settling in Israel. Regulations allowed the Population and Immigration Authority to refrain from granting work permits of persons whose partners or family members are also migrants who are employed in Israel,[67] pose various restrictions on visits of family members, and refrain from extending the work permits of persons who have married or common-law partners who are also migrant workers.[68] The ability to naturalize was limited to only those migrant workers who partnered with Israeli citizens or residents, subject to various restrictions.[69] The High Court of Justice found to be an unconstitutional breach of the right to

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[63]Robin A. Harper & Hani Zubida, *Making Room at the Table: Incorporation of Foreign Workers in Israel*, 29 POL. & SOC. 371 (2017).

[64] Foreign Workers Law, 5751-1991, SH No. 1349 p. 112, art. 1E; Foreign Workers Regulations (Prohibition on Illegal Employment and Securing Fair Conditions)(Adequate Accommodations), 5760-2000, KT No. 6047 p. 775.

[65] Foreign Workers Law, *supra* note 64, art. 1D; Foreign Workers Order (Medical Services for Employees) 5761-2001, KT No. 6100 p. 729.

[66] *Id.*

[67] Administration of Border Crossings, Population and Immigration, Procedure 9.7.0004 for Inviting Foreign Workers in the Care Sector for Employment in Domestic Work within Bilateral Agreements (Nov. 10, 2020), https://www.gov.il/he/departments/policies/caregiving_workers_in_bilaretal_agreements_procedure

[68] An Alternative Anti-Trafficking Action Plan: A Proposed Model Based on a Labor Approach to Trafficking, *supra* note 59, at 60-68.

[69] Tally Kritzman-Amir, *Iterations of the Family: Parents, Children and Mixed-Status Families*, 24 MINN. J. INT'L L. 245 (2015).

family life a procedure that required migrant workers who gave birth to a child during their employment in Israel to return their child to their country of origin as a condition to being able return to work after their maternity leave.[70] The procedure was replaced with another one, which still severely compromises the right to family life of migrant workers: it allows for the child to stay in Israel with only one of the parents; subject to a monetary guarantee to ensure that the child leaves Israel when the parent's employment ends; and to a commitment of the parents not to request for the child to be naturalized in Israel.[71] Even irrespectively of this procedure though, the requirements of the care sector, in which most of the mothers are employed, and which include around the clock employment and residence in the employer's home, make it virtually impossible to find a proper work-life balance that allows enough time for parenting. In the absence of birthright citizenship, children born to migrant workers were undocumented in Israel. Following a massive public campaign, the Israeli government issued amnesty decisions on two separate occasions allowing the naturalization of children of migrant workers who met certain requirements and conditions, as well as the members of their immediate families.[72]

III. Asylum Seekers and Persons in Refugee-Like Situations

Israel is currently hosting about thirty thousand asylum seekers, mostly from Eritrea and Sudan.[73] It is difficult to provide an exact number, but it is often estimated that about seven

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[70] HCJ 11437/05 Kav La'Oved, , *supra* note 5.

[71] Administration of Border Crossings, Population and Immigration, Procedure 5.3.0023 for Handling a Pregnant Foreign Worker and a Foreign Worker Who Gave Birth in Israel (Sept. 5, 2013), https://www.gov.il/BlobFolder/policy/procedure_pregnant_foreign_worker_in_israel_2013/he/5.3.0023.pdf.

[72] Government Decision 2183, Interim Arrangement for Granting Status to Children of Illegals, Their Parents and Siblings Who Are Present in Israel (Aug. 10, 2010), https://www.gov.il/he/departments/policies/2010_des2183; Government Decision 156 Interim Arrangement for Granting Status to Children of Illegals, Their Parents and Siblings Who Are Present in Israel – Amendment (June 18, 2006), https://www.gov.il/he/departments/policies/2006_des156.

[73] POPULATION AND IMMIGRATION AUTHORITY, FOREIGNERS IN ISRAEL DATA, EDITION 2/2020 (July 2020), https://www.gov.il/BlobFolder/generalpage/foreign_workers_stats/he/foreign_workers_report_q2_2020.pdf . Israel also has asylum seekers from Eastern European countries. In many cases, these individuals are brought to Israel by different entities which promise them that they would be able to work in Israel, as they benefit from the delays in the

thousands of those are women.[74] The government refers to this population as "infiltrators", focusing not on their reasons for leaving their country of origin, but rather on their undocumented entry into Israel.

The Israeli asylum system is still in a nascent stage, since, despite being a party to the Convention Relating the Status of Refugees and its Protocol since their entry into force,[75] Israel has been reluctant to fulfill its obligations or even conduct Refugee Status Determination (RSD) on its own in 2009. Before that was only partially involved in a hybrid RSD process administered by the United Nations High Commissioner for Refugees (UNHCR).[76]

Most of the asylum seekers have arrived in Israel since the middle of the first decade of the twenty-first century through its southern, continental border with Egypt in an undocumented manner.[77] Since 2010, many of them were subjected to a difficult journey en route to Israel, which for many included a period of time during which they were held captive by their smugglers, tortured, raped and enslaved to extort money from their families.[78] In 2013, this border became virtually impossible to cross with the erection of a border fence. Only a few dozen managed to cross the fence into Israel since 2013.[79]

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asylum process. *See* THE HOTLINE FOR REFUGEES AND MIGRANTS, KNOCKING AT THE GATE: FLAWED ACCESS TO THE ASYLUM SYSTEM DUE TO THE INFLUX OF APPLICANTS FROM THE UKRAINE AND GEORGIA (Sept. 2017), https://hotline.org.il/wp-content/uploads/2017/11/HRM-Knocking-at-the-Gate-Eng-WEB-2017.pdf.

[74] Vered Lee, Opinion, *Israel Must Help Asylum Seekers Trapped in the Sex Industry*, HAARETZ (Apr. 27, 2018), https://www.haaretz.com/opinion/.premium-israel-must-help-asylum-seekers-trapped-in-the-sex-industry-1.6032884; ASSAF, WOMEN ASYLUM SEEKERS IN ISRAEL (June 2016), http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ISR/INT_CEDAW_NGO_ISR_24218_E.pdf.

[75] G.A. Res. 2198 (XXI), Convention and Protocol Relating to the Status of Refugees art. 1D (July 28, 1951).

[76] Sharon Harel, *The Asylum Apparatus of Israel: The Process of Transferring the Responsibility for Handling Asylum Applications from The United Nations High Commissioner for Refugees to the State of Israel*, *in* WHERE LEVINSKI MEETS ASMARA: SOCIAL AND LEGAL ASPECTS OF ISRAEL'S ASYLUM POLICY 43 (Tally Kritzman-Amir ed., 2015) (in Hebrew).

[77] *Id.*

[78] Human Rights Watch, *"I Wanted to Lie Down and Die": Trafficking and Torture of Eritreans in Sudan and Egypt* (Feb. 11, 2014), https://www.hrw.org/report/2014/02/11/i-wanted-lie-down-and-die/trafficking-and-torture-eritreans-sudan-and-egypt

[79] POPULATION AND IMMIGRATION AUTHORITY, *supra* note 73.

The refugees recognized by Israel are few and far between. Asylum seekers enjoy a fragile status in Israel, with a restricted access to social and economic rights as their asylum applications are pending, often for a period of many years. The Israeli Refugee Status Determination Process was characterized as ineffective and unfair by the United Nations High Commissioner for Refugees.[80] Until 2013, Eritreans and Sudanese were unable to apply for asylum,[81] and even since then, the long wait periods, cumbersome submission process and the extremely low recognition rates discourage many from applying for asylum.[82] Nevertheless, since their arrival, all Eritreans and Sudanese in Israel have been protected from deportation under prolonged-temporary collective arrangements,[83] and Israel has not deported persons to either of those two countries.[84] Many Eritreans and Sudanese asylum seekers were also subject to geographical restrictions on where they can reside and work.[85] Other previously protected populations were forcibly removed to their countries of origin, including, most notably, the asylum seeking community from South Sudan.[86]

Generally speaking, Israel has been applying various means of exclusion on the asylum seeking population, which sparked litigation and in many cases – intervention of the Court followed by massive public critique. However, though the Court took an activist stance in

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[80] UN High Commissioner for Refugees (UNHCR), *UNHCR's Position on the Status of Eritrean and Sudanese Nationals Defined as 'Infiltrators' by Israel* (Nov. 2017), https://www.refworld.org/docid/5a5889584.html.

[81] LIOR BIRGER, SHAHAR SHOHAM & LIAT BOLTZMAN, BETTER A PRISON IN ISRAEL THAN DYING ON THE WAY: TESTIMONIES OF REFUGEES WHO 'VOLUNTARILY' DEPARTED ISRAEL TO RWANDA AND UGANDA AND GAINED PROTECTION IN EUROPE 7 (Jan. 2018), https://edoc.hu-berlin.de/bitstream/handle/18452/21030/Birger%2C%20Shoham%20and%20Bolzman%202018%20Testimonies%20of%20refugees%20departed%20Israel%20to%20Rwanda%20and%20Uganda%20who%20reached%20Europe.pdf?sequence=4&isAllowed=y.

[82] Id.

[83] For a description and a critique of this collective protection mechanism see AdminA 8908/11 Asefu v. Ministry of Interior (July 17, 2012). While the court called for this policy to be set in legislation, it refrained from intervening in it.

[84] Tally Kritzman-Amir, *Introduction*, *in* WHERE LEVINSKI MEETS ASMARA: SOCIAL AND LEGAL ASPECTS OF ISRAEL'S ASYLUM POLICY, *supra* note 76, at 9, 23-25.

[85] HCJ 11437/05 Kav La'Oved, , *supra* note 5.

[86] Admin. Pet. 53765-03-12 Assaf – Aid Organization for Refugees and Asylum Seekers in Israel v. Minister of Interior (June 7, 2012).

protecting the rights of asylum seekers, the ability of the state of Israel to directly exclude asylum seekers was rarely challenged. To put differently, the Court intervened in matters of indirect pressure on asylum seekers to leave Israel, but was far less active regarding direct forms of exclusion.

Israel used many indirect forms of exclusion towards asylum seekers. Perhaps most notable was the use of prolonged immigration detention for persons who have entered in an undocumented manner and for persons who refuse to be forcibly removed, as well as prolonged encampment in detention-like conditions, which was the subject of three cycles of litigation. The High Court of Justice, in an unprecedented set of decisions, enjoined the legislation authorizing the immigration detention in its different forms three times over the course of roughly two years, finding it an unconstitutional breach of the principles of liberty and dignity.[87] The right to family life of refugees was also upheld by the court, including in cases in which the family was formed after the refugee has settled in the host country.[88] The Court also partially enjoined the "deposit law", which required asylum-seekers to "deposit" one-fifth of their salaries each month into a special account that was made available only upon their departure from the country. In addition, under the "deposit law" employers were required to transfer additional sixteen percent of the salaries to the deposit – instead of paying an equivalent amount on the benefits they were eligible to receive from their employers according to Israeli employment laws. This imposition on the already-low salaries of asylum seekers has already jeopardized their stability.[89] Despite the judicial activism the Court

[87] Yonatan Berman, *Detention of Refugees and Asylum Seekers in Israel*, *in* WHERE LEVINSKI MEETS ASMARA: SOCIAL AND LEGAL ASPECTS OF ISRAEL'S ASYLUM POLICY, *supra* note 76, at 147.
[88] Admin. Pet. 8717/08 Bayu v. Ministry of Interior (2009). However, the right of persons benefitting from temporary protection were not similarly protected. *See* AdminA 8908/11 Asefu, *supra* note 83.
[89] Tally Kritzman-Amir & Kayla Rothman-Zecher, *Mainstreaming Refugee Women's Rights Advocacy*, 42 HARV. J. L. & GENDER 501, 546 (2019).

displayed in some of these cases, which was responded with massive political criticism,[90] the lived experience of the asylum seekers and refugees was one of robust exclusion and subjection to constantly changing policies.[91] These exclusion mechanisms are deliberate with the goal of deterring asylum seekers from reaching Israel in first place, and deterring those who do reach Israel from staying.[92] It should also be noted that the judicial activist stance was not consistent throughout the decisions of the Court. For example, a petition to formally grant asylum seekers a right to work was dismissed by the Court. The Court found the government's commitment to refrain from enforcing the prohibition of employing asylum seekers while not acknowledging their right to gainful employment as striking the right balance between their need to support themselves and the interest of the state to not incentivize further entry of asylum seekers.[93] Only a small minority of the asylum seekers hold work permits – those who arrived in Israel before 2007.

The Court by and large reaffirmed the presumption that Israel has a prerogative as a sovereign to make decisions on exclusion and inclusion and hardly intervened in cases having to do with the direct forms of exclusion. Older case law, dating to the time when asylum seekers were few and far between, defined a clear commitment to the principle of non-refoulement, including indirect refoulement through removal to third countries, current case law seems to deviate from that strong commitment to the principle.[94] But in more recent cases, the Court displayed far less

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[90] Political criticism of the Court included suggestions and efforts to pass an override clause to limit the Court's ability to conduct judicial review of the immigration policy. See: Alon Harel, The Israeli Override Clause and the Future of Israeli Democracy, May 15, 2018, https://verfassungsblog.de/the-israeli-override-clause-and-the-future-of-israeli-democracy/.

[91] Yonatan Paz, *Ordered Disorder: African Asylum Seekers in Israel and Discursive Challenges to an Emerging Refugee Regime* (New Issues in Refugee Research, Research Paper No. 205, 2011), http://www.unhcr.org/research/working/4d7a26ba9/ordered-disorder-african-asylum-seekers-israel-discursive-challenges-emerging.html.

[92] Hadas Yaron-Mesegene, *Divide and Conquer Through Order and Disorder: The Politics of Asylum in Israel – Bureaucracy and Public Discourse*", *in* WHERE LEVINSKI MEETS ASMARA: SOCIAL AND LEGAL ASPECTS OF ISRAEL'S ASYLUM POLICY, *supra* note 76,, at 88.

[93] Kritzman-Amir, *supra* note 84, at 23, 33; Public Advocacy, *Employment*, ASSAF, http://assaf.org.il/en/node/139 (last visited May 6, 2018).

[94] HCJ 5448/94 Al Tai v. Minister of Interior, 49(3) PD 843 (1995).

adherence to this very same principle. It dragged its feet when dealing with a petition regarding the strict border policies, which include a border fence along the Egyptian border and border pushbacks to the Egyptian side of the border, until coordination was Egyptian side was terminated and the petition was dismissed as theoretical.[95] The continuous attempts of resettlement (initially allegedly voluntary resettlement but eventually also plans to resettle forcibly) to third countries – Rwanda and Uganda – on the basis of confidential agreements with those countries were initially approved by the Supreme Court.[96] The Court initially found that despite the concerns over the confidentiality of the third country agreements, it was not proven that these countries were unsafe for the asylum seekers, and removals to those countries could continue. However, since the agreements Israel had with Rwanda and Uganda allowed only voluntary resettlements, the Court prohibited detaining people as a means of forcing them to agree to their removal to third countries.[97] When the agreement was altered to allow forcible removals, and asylum seekers were again facing immigration detention if objecting to removal, the removals were once again challenged again in Court, but the additional petitions were dismissed since the Israeli government ended up not being able to carry on with the removals as Uganda and Rwanda were unwilling to accept forcibly deported asylum seekers, due to robust international pressure.[98] The Court dismissed a petition requesting that the State of Israel allows for the naturalization of refugees after years of stay as temporary residents.[99] This means that the only way for refugees to get a permanent status in Israel is through marriage to an Israeli citizen.[100] Finally, despite massive critique over

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[95] Tally Kritzman-Amir & Thomas Spijkerboer, *On the Morality and Legality of Borders*, 26(1) HARV. J. HUM. RTS. 1 (2013).
[96] AdminA 8101/15 Tsegata v. Minister of Interior (Aug. 28, 2017).
[97] *Id.*
[98] HCJ 2445/18 Hotline for Refugees and Migrants v. Prime Minister (Apr. 30, 2018).
[99] Yuval Livnat, *Refuge and Permanent Status in the State of Asylum*, *in* WHERE LEVINSKI MEETS ASMARA: SOCIAL AND LEGAL ASPECTS OF ISRAEL'S ASYLUM POLICY, *supra* note 76, at 343.
[100] *See, e.g.*, Admin. App. (Jer.) 5016-15 Mesegene v. Ministry of Interior (July 3, 2017).

the ineffectiveness and inefficiency of the Israeli asylum process,[101] and over the fact that the group based protection of asylum seekers is not set in primary norms, the Court has allowed the State to stall the Refugee Status Determination process for years and refrain from making determinations in asylum applications of asylum seekers from Sudan and Eritrea.[102] The Court also generally deferred to the interpretation of the state of Israel to the definition of refugee, with only few exceptions.[103]

As a result, the majority of the asylum seekers are in a liminal situation in which they are physically present but legally absent and, in the foreseeable future, they have no chance of obtaining a stable civil status that will allow them to plan their future, build their lives, or settle down. The have access to a very limited and changing set of rights. The number of asylum seekers in Israel has actually decreases since 2013, as many asylum seekers sought and found resettlement opportunities and left to third countries out of despair. Only a few dozens of them have, nevertheless, been granted the status of refugees, while another few hundreds have been awarded collective protection or other forms of protection outside the refugee convention.[104] The Israeli asylum regime has been the subject of critique by the Court, academia, transnational organizations, and administrative bodies as one of the most exclusionary in the world.[105]

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[101] *See, e.g.*, HCJ 7385/13 Eitan, *supra* note 4, ¶ 35 (Vogelman, J., opinion); HCJ 8665/14 Desta , *supra* note 4, ¶ 3 (Hayut, J., opinion).

[102] HCJ 4630/17 Tagal v. Prime Minister (Oct. 29, 2018); *see also* HCJ 4630/17 Tagal v. Prime Minister (Dec. 17, 2018) (updating Response on Behalf of the Respondents). Interestingly, it was the lower tribunals that incentivized the State to conduct a more efficient Refugee Status Determination process. *See* Weill & Kritzman-Amir, *supra* note 10.

[103] Admin. App. (Jer.) 12154-04-18 Population and Immigration Authority v. Mesegene (Feb. 15, 2018).

[104] Livnat, *supra* note 99.

[105] THE STATE COMPTROLLER, ANNUAL REPORT 64C 149-86 (2014) (Isr.), http://assaf.org.il/he/sites/default/files/%D7%93%D7%95%D7%97%20%D7%9E%D7%A2%D7%A7%D7%91%20%D7%9E%D7%91%D7%A7%D7%A8%20%D7%94%D7%9E%D7%93%D7%99%D7%A0%D7%94%20-%20%D7%94%D7%98%D7%99%D7%A4%D7%95%D7%9C%20%D7%91%D7%96%D7%A8%D7%99%D7%9D%20%D7%A9%D7%90%D7%99%D7%A0%D7%9D%20%D7%91%D7%A8%D7%99%20%D7%94%D7%A8%D7%97%D7%A7%D7%94%20%D7%9E%D7%99%D7%A9%D7%A8%D7%90%D7%9C.pdf; HCJ 7385/13

IV. Palestinians and Enemy nationals

Palestinian residents of the Occupied Territories and enemy nationals are a category of their own in Israel's immigration and citizenship regime, situated on the exclusionary end of the spectrum. Since 2002, Israel has banned the issuance of entry and residency permits and naturalization of Palestinians in an administrative decision.[106] This decision followed a suicide bomb attack in which sixteen Israelis were killed, carried out by a resident of the West Bank who acquired Israeli citizenship through his Israeli mother.[107] While it was mostly justifies by security reasons, demographic considerations were also a part of the justifications.[108] The administrative decision banned family reunification and immigration for the purpose of marriage between Israeli citizens or residents and their Palestinian partners, putting an end to a previous set of procedures that had allowed family reunification and set a gradual process of naturalization for persons who moved to Israel for family reunification purposes.[109] As of the time of this decision, even if asylum seekers and migrant workers could, in some situations, obtain a permanent status in Israel through marriage to an Israeli national, this was not possible for Palestinians. A petition challenging the constitutionality of the decision[110] led to the enactment of a temporary provision in July 2003: The

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Eitan, *supra* note 4; WHERE LEVINSKI MEETS ASMARA: SOCIAL AND LEGAL ASPECTS OF ISRAEL'S ASYLUM POLICY, *supra* note 76.

[106] S*ee* Government Decision 1813 (May 12, 2002).

[107] Na'ama Carmi, *The Nationality and Entry into Israel Case Before the Supreme Court of Israel*, 22 ISR. STUD. F. 26, 31–32 (2007); Suzanne Goldenberg, *Suicide Bomb Kills 16 Israelis in Hotel*, GUARDIAN (Mar. 28, 2002), https://www.theguardian.com/world/2002/mar/28/israel1.

[108] On the disagreement within the Court on the demographic purpose of the prohibition. See HCJ 7052/03 Adalah Legal Centre for Arab Minority Rights in Israel et al. v. Minister of Interior 61(2) PD 202, 338 (2006) (Isr.) (Procaccia, J. & Joubran, J., dissenting). See generally HCJ 466/07 MK Galon v. The Legal Advisor to the Government 65(2) PD 44 (2012) (Isr.); Yael Flitman, The Story of Six Women: Different Faces in the Issue of Family Reunification, in THE LEGAL ASPECTS OF JEWISH-ARAB RELATIONS IN ISRAEL 335, 347 n.57 (Ilan Saban & Rael Zreik eds., 2016). For more recent reliance on the demographic justification see: Fatma Tanis, Israel's New Government Is Dealt A Defeat With Vote Over Palestinian Citizenship Law, NPR, July 6, 2021, https://www.npr.org/2021/07/06/1013351597/israels-new-government-dealt-a-setback-with-defeat-of-controversial-citizenship-.

[109] Carmi, *supra* note 107, at 32.

[110] *Id.* at 50 n.11.

Nationality and Entry to Israel Law (Temporary Provisions).[111] The legislated ban required the Minister of the Interior to refrain from granting citizenship or a permit to reside in Israel to a Palestinian from the West Bank or Gaza.[112] The law contained only a few exceptions under which permits may be issued: temporary permits for employment or for medical reasons, permits to prevent the separation of a child below the age of fourteen from a parent who is lawfully staying in Israel, and permits to Palestinian collaborators with the Israeli security forces.[113] It reflected an irrefutable presumption of the dangerousness of Palestinians, suspended only when a Palestinian collaborates with the Israeli security forces or has otherwise demonstrated exceptional circumstances. Denial of family reunification requests became the norm, and approving them became the exception, requiring Palestinians who seek family reunification must establish that their case meets the exceptions set in the law.[114] The presumption was somewhat relaxed in an amendment which left room for discretion in granting status to men over the age of thirty-five and women over the age of twenty-five who have Israeli partners, as well as to persons who demonstrate exceptional humanitarian needs.[115]

Amendments also added explicit nationality bans on entry or stay of nationals of four additional countries: Syria, Lebanon, Iran, and Iraq.[116] Israel's High Court of Justice twice reviewed the nationality ban law and twice effectively upheld it by a slim minority.[117] The majority of the court found the law to be justified on security grounds, despite the dearth of reliable statistics

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[111] The temporary provision is valid until a preset date and can be extended subject to parliamentary approval. *See generally* Nationality and Entry to Israel law (Temporary Provision), 5763–2003, SH 1901 No. 544, arts. 1–5.
[112] *Id.* art. 2.
[113] *Id.* arts. 3(1)-3(2) (Isr.). Initially the age was twelve but this was amended in 2005.
[114] Carmi, *supra* note 107, at 43–44.
[115] *See* Nationality and Entry to Israel Law (Temporary Order) (Amendment No. 2), 5767–2007, SH No, 2092 p. 295. The discretionary granting of status was allowed since persons of those ages are typically less of a security risk. However, this little difference since Palestinians typically marry at a much younger age.
[116] *Id.*
[117] HCJ 7052/03 Adalah Legal Centre for Arab Minority Rights in Israel v. Minister of Interior 61(2) PD 202, 338 (2006); HCJ 466/07 MK Galon v. The Legal Advisor to the Government 65(2) PD 44 (2012).

supporting the proffered security concerns.[118] The law, which was initially passed as a temporary ordinance, was continuously extended, until political struggles caused its demise in July 2021.[119]

In addition, Israel excludes Palestinians from receiving refugee protection through a broad interpretation of Article 1D of the Refugee Convention states. This Article excludes from the definition of refugee persons "who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance."[120] Israel interprets this provision as excising Palestinians from Refugee Convention protections, since some Palestinians receive assistance from UNRWA.[121] This interpretation deviates from soft law that interprets Article 1D as excluding only the Palestinians with actual access to UNRWA.[122] The result is that Palestinians' applications for protection are not processed through the Israeli asylum system. Some Palestinian asylum seekers are refused any form of

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[118] To support the security justification, the government pointed to twenty-six Palestinians who had been granted entry permits and were involved in terrorism. While any terrorist attack is cause for concern, the numerator alone is deeply misleading. Once the denominator of 130,000 Palestinians who received entry permits is introduced, the statistics become much less convincing. A blanket prohibition was applied to an entire population on account of the behavior of 0.02% of that population. Barak Medina & Ilan Saban, *Human Rights and Risk Taking: On Democracy, "Ethnic Profiling" and the Limitation Clause Tests (Following the Decision on the Citizenship and Entry to Israel Law)*, 29 MISHPATIM 47, 51 (2009).

[119] Laurie Kellman, Israel Blocks Law that keeps out Palestinian Spouses, AP, July 6, 2021, https://apnews.com/article/middle-east-israel-religion-business-government-and-politics-f99c3aff0368bde00eef634ef42fde7d.

[120] G.A. Res. 2198 (XXI), Convention and Protocol Relating to the Status of Refugees art. 1D (July 28, 1951).

[121] UNRWA is the United Nations Works and Relief Agency for Palestinian Refugees in the Near East. The agency began its operation in 1950, prior to the entry to force of the refugee convention and, in absence of a solution to the Palestinian refugees problem, still operates to date. *See* Riccardo Bocco, *UNRWA and the Palestinian Refugees: A History Within History*, 28 REFUGEE SURV. Q. 229 230–37 (2010); *Who We Are*, UNRWA, https://www.unrwa.org/who-we-are (last visited Jan. 12, 2019). On the interpretation of Article 1D, see MICHAEL KAGAN & ANAT BEN-DOR, NOWHERE TO RUN: GAY PALESTINIAN ASYLUM-SEEKERS IN ISRAEL (2008), https://enlaw.tau.ac.il/sites/law-english.tau.ac.il/files/media_server/Law/NowheretoRun,%20Michael%20Kagan%20%26%20Anat%20Ben-Dor%20(2008).pdf. This interpretation was generally accepted by the courts. *See generally* Yuval Livnat, *Palestinian Collaborators as Asylum Seekers in Israel*, 19 LAW & GOVERNANCE 79 (2018).

[122] *See generally* U.N. High Comm'r for Refugees, Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention and Protocol Relating to the Status of Refugees to Palestinian Refugees (Dec. 2017), http://www.refworld.org/pdfid/5a1836804.pdf.

protection and removed, while a few others receive discretionary administrative forms of protection.[123]

Similarly, "enemy nationals" are excluded from the asylum system, as per Israel's internal procedure, presumably because of a similar presumption of dangerousness that is applied in cases of Palestinians seeking family reunification.[124] However, in effect thousands of asylum seekers remain in Israel from enemy countries, some benefit from humanitarian protection and two (from Darfur and Iran) were recognized as a refugee.

Finally, it should also be mentioned that Palestinians are more likely to lose their citizenship or residency status, since one of the grounds on which status may be revoked is entering into enemy countries or acquiring citizenship in one of those countries, in which many of the Palestinian citizens of Israel have family ties or other affiliations.[125] Recent amendments to the Nationality Law allow revoking the citizenship of a person who was found to engage in a breach of trust, a category which includes treason and involvement in terrorism.[126] Citizenship can be revoked incidentally to a criminal conviction for these acts.[127] The constitutionality of this amendment is currently being examined in the Supreme Court.[128] The few rare occasions on which citizenship has been revoked involved Palestinian citizens.[129] It should also be noted that a

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[123] See, e.g., *See* Menachem Hofnung, *The Price of Information: Admission and Rehabilitation of Collaborators with the Israeli Security Apparatuses in the Israeli Cities*, 18 LAW & GOVERNANCE 55, 58 (2017).

[124]Administration of Border Crossings, Population and Immigration, Procedure 5.2.012 for Handling Asylum Applicants in Israel, art. 10 (Oct. 10, 2019) https://www.gov.il/BlobFolder/policy/handling_political_asylum_seekers_in_israel/he/5.2.0012.pdf.

[125] Nationality Law, *supra* note 2, art. 11.

[126] *Id. See also* HCJ 2934/07 Israel Law Center v. Chair Person of The Knesset (Sept. 16, 2007); HCJ 7803/06 Abu Arfe v. Minister of Interior (Sept. 13, 2017).

[127] Nationality Law, *supra* note 2, art. 11A.

[128] Appeal, AdminA 8277/17 Ziwad v. Ministry of Interior (Oct. 26, 2017), https://law.acri.org.il/he/wp-content/uploads/2017/10/irur-atira-minhalit-8277-17-bitul-ezrahut.pdf.

[129] Letter from Adv. Oded Feller, Association of Civil Rights in Israel, to the Legal Advisor of the Ministry of Interior 6 (Jan. 10, 2007) (on file with author). *See also, e.g.*, HCJ 2271/98 Abed v. Minister of Interior (Aug. 26, 2001). It should also be mentioned that occasionally, citizenship was revoked to those who acquired it under false pretence. This was not done exclusively for Palestinians, but also for persons who claimed to be Jewish. *See, e.g.*, HCJ 713/00 Adishvili v. Ministry of Interior (Mar. 20, 2001); HCJ 754/83 Rankin v. Ministry of Interior (Nov. 16, 1984).

significant number of non-Jews, including the Druze population of the occupied Golan Heights and Palestinian residents of occupied and annexed East Jerusalem do not have citizenship status, but rather hold an inferior residency status. This is a status its holders can easily lose if they relocate, even temporarily, to another country[130] and which carries access to most rights, with a significant exception of political rights. Indeed, especially since the mid-1990s, Israel revoked the residency status of thousands of Palestinians who used to have permanent residency from East Jerusalem.[131] In a famous decision from 2017, the Court enjoined the decision of the Minister of Interior to invalidate the residency of Palestinians from East Jerusalem who were members of the Palestinian Parliament in 2017, requiring authorization in primary legislation for such a decision.[132] The Knesset quickly legislated an amendment to the Entry to Israel Law, authorizing the Minister of Interior to invalidate the residency of persons who committed act of breach of trust, subject to certain conditions.[133]

V. Conclusion

Despite the uncodified nature of the immigration, asylum and citizenship regime of Israel,[134] a clear pattern emerges. It is a regime which is managed around the categorization of persons, and is subject to a continuous battle over where and how people should be categorized,

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[130] *See, e.g.*, Admin. Pet. (Jer.) 384/07 Siaj v. Minister of Interior (Feb. 11, 2008) (regarding the loss of residency of a person who left Israel to study abroad); Admin Pet. (Jer.) 247/07 Omri v. Minister of Interior (Oct. 10, 2007) (regarding the loss of residency of a person who left Israel to live with a spouse in his country of citizenship and wanted to regain his residency following the divorce). *See also* AdminA 9807/09 Zarina v. Ministry of Interior (Aug. 1, 2011) (regarding the revocation of residency of minors before they reached adulthood if their parents relocated).

[131] News, *Israel: Jerusalem Palestinians Stripped of Status – Discriminatory Residency Revocations*, HUMAN RIGHTS WATCH (Aug. 8, 2017), https://www.hrw.org/news/2017/08/08/israel-jerusalem-palestinians-stripped-status.

[132] HCJ 7803/06 Abu Arfa v. Minister of Interior (Sept. 13, 2017).

[133] Entry to Israel Law, *supra* note 2, art. 11A.

[134] On occasion, there were attempts to codify the immigration, asylum and citizenship regimes, but so far they have not been successful. Private Bill 813/24 Basic Law Proposal: Immigration to Israel (May Golan) https://main.knesset.gov.il/Activity/Legislation/Laws/pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2157408

and which derivative rights attached to each category. Once categorized, people would find it increasingly hard to be re-categorized, and to enjoy better access to rights and status as members of a different category of immigrants. Despite playing a crucial role in the formation of the immigration, asylum and citizenship regime, the Court has generally refrained from undermining the validity of the categorization, resulting in deference to the sovereign state in the most crucial elements of the decisions to include or exclude.