UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report -

Universal Periodic Review:

ISRAEL

I. BACKGROUND INFORMATION

Israel acceded to the *1951 Convention relating to the Status of Refugees* in 1954 and to its *1967 Protocol* in 1968 (hereinafter referred to jointly as the *1951 Convention*). However, there is no national legal framework for the protection for refugees and asylum-seekers. Furthermore, Israel ratified the *1954 Convention on the Status of Stateless Persons* (*1954 Convention*), and has signed, but not ratified the *1961 Convention on the Reduction of Statelessness* (*1961 Convention*).

According to statistics published by the Ministry of Interior in July 2013, Israel hosts 54,201 "infiltrators" which UNHCR describes as refugees and asylum-seekers, of which persons of Eritrean (36,067) or Sudanese (13,551) origin are the majority.[1] These two groups as well as a relatively smaller group of persons from Africa, predominately make up the influx of asylum-seekers arriving in Israel through the country's southern border with Egypt. The average number of new arrivals in 2011 stood well over 1,100 individuals per month, and during the first half of 2012, the influx continued at around 1,500 per month. The entry of asylum-seekers and migrants entering Israel from the border with Sinai has practically ceased owing to three factors: (1) the completion of the border fence with Egypt, (2) the reported increased coordination with the Egyptian border police to prevent individuals from entering Israel, and (3) the implementation of the amended *1954 Prevention of Infiltration Law* ("the New Law") imposing long term detention on all "infiltrators" (elaborated below).

As a result of these factors, there have been less than 50 new arrivals per month since October 2012. From January to July 2013, only 32 individuals have entered Israel from the Egyptian border; all of whom were of Sudanese or Eritrean origin. The border with Egypt is now essentially sealed for asylum-seekers and migrants. Prior to June 2012, individuals identified as citizens of Sudan or Eritrea received *de facto* "group protection" in Israel; directly registered with the Government, and were released from detention. They also received visas for "conditional release from detention", valid for a four-month period subject to renewal, which permitted their temporary and legal residence in the country. But with the implementation of the amended *1954 Prevention of Infiltration Law*, all persons who arrive after 13 June 2012 are detained for an indefinite period of time or until their deportation.

Asylum-seekers outside of detention and in the asylum procedure are provided a three-month "conditional release" visa while their refugee claim is being reviewed. Asylum-seekers do not

[1] All other statistics in this report are best estimates as the Government of Israel does not systematically share information with UNHCR. The most recent published numbers are significantly lower than the "over 64,000 infiltrators" the Ministry of Interior reported in June 2012. No explanation of the 10,000 reduction of "infiltrators" (persons of concern to UNHCR) has been provided.

receive a visa once their claims for refugee status have been rejected by the Government, even if they appeal to court. Many persons remain for long periods of time without a visa due to inefficiencies with the visa renewal system. The "conditional release" visa does not allow holders' access to basic services, healthcare or to lawful employment.

A large number of asylum-seekers are subjected to abuse and torture, including rape, at the hands of smugglers and traffickers whilst travelling to Israel. Since August 2011, UNHCR interviewed more than 500 men and women, and unaccompanied minors who were held hostage in the Sinai en route to Israel, and subjected to abuse and torture at the hands of traffickers/smugglers attempting to extort money from their families. All the men and women interviewed bore visible scars, wounds and injuries attesting to the physical abuse they endured; injuries that were often so serious that it required medical intervention. Most of these victims were identified by the UNHCR during monitoring visits to the main detention facility in Israel for irregular migrants and asylum-seekers who had entered Israel from the Sinai border. Not all victims of trafficking and human smuggling are identified by UNHCR. UNHCR is particularly concerned at the lack of adequate screening procedures in detention to access health care, including medical attention for children and pregnant women. At present, UNHCR remains concerned for 149 identified victims of torture that remain in detention, many of whom have been detained for over a year.

In July 2009, the Ministry of Interior assumed primary responsibility over the registration of asylum-seekers and the process of refugee status determination (RSD). Prior to this, registration and RSD was shouldered by UNHCR. In 2010, the National Status Granting Body (NSGB) reviewed 3,366 asylum applications and recognized only six asylum-seekers as refugees (a recognition rate of 0.17 per cent).[2] In 2011, UNHCR was informed that over 3,700 cases were reviewed by the Ministry of Interior and of these, only eight asylum-seekers were recommended for refugee status to the NSGB. At present UNHCR has not obtained statistics on the number of cases assessed in 2012 and has no knowledge of any granted of refugee status.

Israel has taken several measures aimed at deterring new arrivals or "infiltrators". First, the new *"Anti-Infiltration" Law* enforces long-term detention for persons who enter Israel irregularly. This law largely applies to individuals seeking asylum from Africa who have entered into Israel via Egypt. Second, the construction of a barrier along the southern border with Egypt has been completed. Third, Israel has constructed a larger detention facility specifically for Africans entering Israel from the southern border. Fourth, Israel has prohibited "infiltrators" from transferring money outside of Israel. Lastly, the Government has plans to enforce heavy fines against employers who hire asylum-seekers. In September 2012, a *Procedure for the Handling of Infiltrators Involved in Criminal Activities* was implemented. In July 2013, the Israeli Population, Immigration and Border Authority (PIBA), amended its content by expanding the criminal grounds permitting the arrest and detention of "infiltrators" under the *1954 Law for the Prevention of Infiltration*. This exposes asylum-seekers outside of detention to arrest and long term detention for non-serious offences. UNHCR has monitored over 300 individuals placed in long term detention in accordance with this procedure since its inception. The aim of the law is to reduce the number of "infiltrators" from entering Israel by removing economic incentives for doing so, including by prohibiting asylum-seekers from accessing monies legitimately earned outside of the

[2] Reply to a petition by Hotline for Migrant Worker's to Administrative Appeal (Centre) 24177-01-11 (5 May 2011). The six asylum-seekers had been recommended for recognition of refugee status by UNHCR in 2009 prior to the handover of RSD to the Government.

country. Recently, the police have made concerted efforts to close private business enterprises owned asylum-seekers with "conditional release visas" and work permits because their visas are not valid for longer than one year as required by law to operate a business in Israel. On 25 July 2012, the Knesset approved a bill proposing amendments to the New Law in a preliminary reading, which stipulates that any Israeli employer who employs, accommodates or transports illegal infiltrators will face a punishment of up to five years in prison or a NIS 75,300 fine.[3]

As the number of African migrants and asylum-seekers has become more visible, UNHCR is concerned by the xenophobic statements made by some public officials in Israel. For example, statements have been made that "infiltrators" (which include asylum-seekers) are responsible for crime in Israel. Although the Government is seeking to give the domestic debate on asylum-seekers a more moderate character, such statements can negatively shape public opinion and quickly lead to highly unfavourable consequences. Whereas tensions have subsided, the practice of deterring asylum-seekers from coming to Israel has increased. Moreover, there is no clear strategy aimed towards improving the living conditions of the large numbers of asylum-seekers/migrants residing in Israel, particularly in Tel Aviv.

The relationship between UNHCR and the Government has remained positive despite the Government's strong disapproval of UNHCR's intervention, by way of an *amicus curiae* brief, to the Supreme Court on a case concerning the imposition of long-term detention on asylum-seekers. Greater information sharing with UNHCR and the systematic sharing of demographic information of persons of concern, can improve Israel and UNHCR's coordination efforts to address protection needs, particularly for vulnerable asylum-seekers. Moreover, the application of UNHCR eligibility guidelines will overcome the increasing challenges Israel faces in providing protection for asylum-seekers.

II. ACHIEVEMENTS AND BEST PRACTICES

UNHCR welcomes the Government's achievements in the following areas:

1. The hosting of large numbers of asylum-seekers and migrants on its territory, and the positive spirit of the Government with which a number of critical protection challenges have been resolved in recent years, UNHCR acknowledges the challenges faced by the Government in addressing mixed migration to Israel and has offered its continued support to the Government to find appropriate solutions to ensure that legitimate security and border control measures do not prevent those seeking asylum from accessing protection in Israel.

2. The efforts made to create a new *Asylum Regulation* for the review of asylum claims in Israel, which was implemented in July 2009. However, UNHCR would like to note that the Regulation does not fully meet international standards.

III. CHALLENGES AND RECOMMENDATIONS

Issue 1: <u>Lack of a national legal framework addressing the rights of asylum-seekers, refugees and migrants</u>

UNHCR is concerned with the state of the present asylum system in Israel. With a recognition rate below one per cent, the eligibility criteria applied by the authorities appear

[3] Anti-infiltration Law (offenses and prosecution) (amendment number 4) (prevention of employment), 2012

overly restrictive. While UNHCR welcomes the Ministry of Interior's 2009 assumption of responsibility for RSD, and the pledges made at the 2011 Ministerial Conference on Refugee and Stateless Persons to enhance refugee protection[4], in particular on the enhancement of productivity in the UNHCR Ministerial Conference, it is clear that further efforts are required. The absence of a systematic procedure and the inadequate capacity of the Ministry make it difficult, for example, to promptly and fairly process asylum claims. A significant number of applicants are forced to wait several months or longer to have their claims reviewed. Over 1,400 asylum-seekers in detention were not provided information on how to submit asylum claims until six months after their arrival and subsequent detention. Moreover, the accelerated processing model in use in Israel lacks the necessary procedural safeguards, including adequate access to an opportunity to appeal a decision. It is UNHCR's position that such deficiencies are likely to impact the quality and fairness of decisions rendered for such claims. Moreover, under the current eligibility practices of Israeli authorities, the gender dimension of persecution is usually considered to fall outside the ambit of the *1951 Convention*. As reflected in the UNHCR Guidelines on gender-related persecution[5] (and endorsed by the General Assembly) the refugee definition should be interpreted with an awareness of possible gender dimensions in order to determine accurately claims to refugee status.

Recommendation: Adopt national refugee legislation, which, *inter alia*, would provide the necessary procedural rules and regulations to govern the Israeli asylum procedure, including the incorporation of the principle of *non-refoulement*, which is not codified in the existing domestic legislation of Israel[6], and the inclusion of gender-based persecution as a ground for refugee status, as outlined in UNHCR Guidelines on International Protection relating to gender-related persecution.

Issue 2: <u>The approval and implementation of the Law for the Prevention of Infiltration</u>

UNHCR expressed serious concern prior to and after the approval of the *Law for the Prevention of Infiltration*. The application of the legislation to asylum-seekers constitutes a breach of the rights and obligations of the Government as stipulated in the *1951 Convention*, of which Israel is a founding signatory. Of particular concern is the long-term detention of asylum-seekers; a minimum of three years according to the law. At present, over 2,000 asylum-seekers and migrants are detained under the law, the majority of them for longer than one year. The application of the law could be considered discriminatory, in contravention of

[4] See further http://www.unhcr.org/commemorations/Pledges2011-preview-compilation-analysis.pdf, page 85, excerpts from national statement made at the Ministerial Conference.

[5] UN High Commissioner for Refugees, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, available at: http://www.unhcr.org/refworld/docid/3d36f1c64.html

[6] This was also noted by the Committee against Torture in its concluding observations and recommendations on Israel at its 42nd session: "While the Committee is aware of the fact that Israel hosts increasing numbers of asylum-seekers and refugees on its territory, and whereas the principle of non-refoulement under article 3 of the Convention has been recognized by the High Court as a binding principle, the Committee regrets that this principle has not been formally incorporated into domestic law, policy, practices or procedure. (…) **The principle of non-refoulement should be incorporated into the domestic legislation of the State party, so that the asylum procedure includes a thorough examination of the merits of each individual case under article 3 of the Convention. An adequate mechanism for the review of the decision to remove a person should also be in place."** (paragraph 22), see further below in the Annex, page 10.

other international obligations under the ICCPR and ICERD[7], as it will apply, in practice, almost solely to persons of African descent. Additionally, UNHCR is concerned that the law also applies to children and other persons with specific protection needs. Many asylum-seekers who have been detained have experienced torture and abuse prior to their arrival to Israel and do not receive adequate medical treatment whilst in detention.[8]

Recommendation: The recent approval of the legislation for the *Prevention of Infiltration* should specifically exclude its application to persons seeking asylum, and asylum-seekers presently detained should be released.

Issue 3: <u>The application of the recently amended Procedure for the Handling of Infiltrators Involved in Criminal Activities ("the Procedure")</u>

UNHCR has expressed in writing to the Government of Israel its serious concerns that the Procedure expands the criminal grounds permitting the arrest and detention of "infiltrators" under the *1954 Law for the Prevention of Infiltration*. It now includes "an offense which causes real harm to the public order" – including non-serious property offences (e.g. thefts of cell phones or bicycles), offences of forgery (e.g. forgery of visas and permits), as well as offences of violence (non-physical threats of violence and regular assault offenses)". Where an officer finds that an asylum-seeker poses a real harm to public order, then he or she may be subject to administrative detention despite the fact that there may be insufficient evidence or a lack of public interest to try the person in a court of law. Essentially, in accordance with the *Anti-Infiltration Law*, he or she will be detained under for at least three years and/or indefinitely.

It is also pertinent to note that the Procedure may be applied retroactively to individuals whose cases have been closed (due to a lack of evidence or lack of public interest) and to individuals who have since been released from prison. While acknowledging legitimate national security concerns and noting that asylum-seekers and refugees are not above the law and are subject to the laws of Israel (*see* article 2, *1951 Convention*), UNHCR considers that the amended Procedure, as far as it is applied to asylum-seekers and refugees, is not in conformity with international law according to the ICCPR and human rights standards in a number of ways: exposes individuals to double jeopardy, lacks legal certainty, is contrary to the presumption of innocence, due process, equality before the court/non-discrimination, does not constitute a legitimate purpose for detention (*see* UNHCR Detention Guideline 4.1), and is contrary to the principle that no person shall be under administration detention for criminal charges (*see* OHCHR, Working Group on Arbitrary Detention which stated that governments cannot use immigration powers to detain a non-national individual if the detention is related

[7] The Committee on the Elimination of Racial Discrimination has also expressed concern about the impact of the Prevention of Infiltration Law on persons in need of international protection in its concluding observations and recommendations on Israel at its 80th session, para. 22, available at:
http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf
(…) The Committee is, however, concerned at the stigmatization of migrant workers on the basis of their country of origin, as suggested by the enactment of the 2012 Law to Prevent Infiltration, pursuant to which irregular asylum seekers can be imprisoned for at least three years upon entry into Israel and asylum-seekers from enemy states can serve life sentences (Articles 2 and 5(d) (iii) of the Convention). **Recalling its General Recommendation 30 (2004) on discrimination against non-citizens, the Committee urges the State party to amend the Law to Prevent Infiltration and any other legislation aimed at discriminating against asylum-seekers or denying refugees, on the basis of their national origin, the protection guaranteed under the 1951 Geneva Convention relating to the Status of Refugees.**

[8] See UNHCR's request to submit an Amicus Curiae to the Supreme Court of Israel (HCJ 7146/12).

to criminal charges, as these offences should be dealt with under the criminal law, Opinion No. 45/2006, para. 28).

Recommendation: The application of the Procedure to asylum-seekers should cease as it is at variance with international law.[9]

Issue 4: <u>Limited rights of asylum-seekers with "conditional release" visas</u>

The absence of a legal framework results in major difficulties for asylum-seekers in Israel. Until recently, Sudanese and Eritrean citizens received *de facto* "group protection" in Israel (similar to *prima facie* recognition[10]). The legal status provided to most asylum-seekers is a "conditional release" visa that limits an individual's right to exercise economic, social and cultural rights, and forces individuals to live in a state of uncertainty, often for many years, especially since there is no right to permanent residency for refugees. The "conditional release" visas for those provided "group protection" must be renewed every four months, and for some individuals, upon condition that he or she reports to the MOI on a weekly basis. The visa does not formally allow the holder to work, although work is informally tolerated. As a result, asylum-seekers are often forced to work in conditions that would be deemed unlawful for Israeli citizens, for example where their employers fail to adhere to the laws regarding minimum wage or mandatory rest periods.

Often medical insurance is not provided to asylum-seekers, causing an unbearably large financial burden on asylum-seekers in need of medical treatment. Moreover, the *National Medical Insurance Law* does not cover asylum-seekers. Instead, they are insured by an inferior private insurance scheme that severely curtails their access to medical treatment. At present, there are over 150 persons in need of HIV treatment, who cannot access the required Anti-Retroviral Treatment due to their status as asylum-seekers or economic migrants.

Furthermore, in a few locations, segregated schooling and different standards of treatment are being applied to non-citizen in elementary schools. Despite the decision of the Administrative Court in Beer Sheva to integrate children of asylum-seekers, refugees and migrants who are residents of Eilat into schools, the City authorities have not taken adequate steps to do so.

Recommendation: Modify existing regulations and legislation with a view to facilitate access for asylum-seekers and refugees to economic, social and cultural rights, in particular to ensure access to legal employment, effective access to the social welfare services and healthcare.

Issue 5: <u>Absence of an effective framework to address statelessness and ensure the protection of stateless persons</u>

5.1: While Israel has ratified the *1954 Convention* and has signed (but not yet ratified) the *1961 Convention*, it has thus far not adequately addressed the issue of statelessness in its

[9] *See* UNHCR Observations on the "Procedure (Nohal) for the Handling of Infiltrators Involved in Criminal Activities", 30 July 2013, provided to the Minister of Interior and Attorney General on 30 July 2013.

[10] A person who meets the criteria of the UNHCR Statute qualifies for the protection of the United Nations provided by the High Commissioner for Refugees, regardless of whether or not the person is in a country that is a party to the *1951 Convention* or the *1967 Protocol* or whether or not the person has been recognized by the host country as a refugee under either of these instruments. Such refugees, being within the High Commissioner's mandate, are usually referred to as "mandate refugees".

domestic legal framework, although it has recognized the need to do so. As such, stateless persons currently do not enjoy the full range of civil, social, economic and cultural rights. By ratifying the *1954 Convention*, Israel has demonstrated its commitment to upholding international standards regarding the treatment and protection of stateless persons. To ensure that stateless persons can enjoy the rights guaranteed by the *1954 Convention*, however, the State party must establish procedures that allow for the recognition of individuals as stateless, within the meaning of article 1(1) of the *1954 Convention* – so that they may be identified and protected accordingly.

The State has made progress by establishing certain procedures related to stateless individuals, but these require further development to ensure their fundamental human rights are protected. For instance, a procedure exists for detained persons to state their nationality in the absence of any proof, without risk of deportation. However, this procedure excludes persons who are considered "infiltrators" i.e. asylum-seekers under the new Law. Furthermore, it does not guarantee the acquisition of temporary or permanent legal status, and has left many individuals without a solution.[11] In practice, disputed nationalities and persons whose nationality cannot be determined or who originate from States with which Israel does not have diplomatic relations, remain in detention for long periods of time. There are over 150 persons whose nationalities are in dispute. A small number have been in detention for over six years, and many without having the opportunity to fully present their identity and in some cases, their refugee claim. A large number of individuals remain outside of detention without any status in Israel.[12]

UNHCR notes with concern that where stateless persons lack the ability to maintain a legal presence in their country of habitual residence, they become particularly vulnerable to indefinite detention on immigration grounds, especially as they often have no other country of nationality to which they can be removed as practical matter. In clarifying the right against arbitrary detention enshrined in article 9(1) of the International Covenant on Civil and Political Rights (ICCPR), to which Israel is also a State party, the Human Rights Committee has indicated that indefinite detention is a *per se* violation of international law.[13] Likewise, the UN Working Group on Arbitrary Detention has voiced concern over the situation in which persons face indefinite incarceration because their expulsion cannot be executed for practical reasons.[14] UNHCR's Executive Committee has therefore called on States "not to detain stateless persons on the sole basis of their being stateless and to treat them in accordance with international human rights law."[15] UNHCR's *Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers* further note that a stateless person's inability to secure a travel document or be accepted by another State should not lead to indefinite detention.[16]

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[11] See Procedure for Dealing with a Foreign Subjects who Claim to be Stateless, Regulation 10.1.0015, date 12/11/2012

[12] Jerusalem Post, 24 May 2009, Egyptians in Israel battle for rights, over 4000 in Israel living illegally without visas.

[13] *C v. Australia, HRC Communication No. 900/00, 13 November 2002.*

[14] UN-WGAD, 13th Session of the UN Human Rights Council, UN Doc. A/HRC/13/30, 15 January 2010, para. 59.

[15] UNHCR, Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, 6 October 2006, No. 106 (LVII) – 2006, paragraph (w).

[16] UNHCR's Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers, February 1999,available at: http://www.unhcr.org/refworld/pdfid/3c2b3f844.pdf.

Recommendation: Incorporate into domestic law the definition of a "stateless person", as established by article 1(1) of the *1954 Convention*, and establish corresponding procedures to identify individuals who are stateless so as to ensure their protection in line with the provisions contained in the *1954 Convention*. Efforts to determine whether an individual is stateless are especially relevant where persons whose nationality is in question are subject to detention or deportation for unlawful entry and/or stay. Israel is therefore respectfully encouraged to adopt policies clarifying this matter. Once an individual is identified as stateless, he or she should not be subjected to prolonged detention on immigration grounds, nor detained for the purpose of expulsion where this cannot reasonably be expected to occur as a result of his or her country of nationality being unknown.

5.2: Israel has further demonstrated its commitment to human rights as demonstrated by its ratification of the CRC, ICCPR, CERD, and CEDAW. These instruments carry multiple provisions that protect the right to a nationality, and collectively establish that all persons have the right to a nationality; that all children in the territory of a State party and subject to its jurisdiction must be registered immediately after birth; and that rights to nationality must be free from discrimination, *inter alia*, on the basis of race, colour, sex, religion, ethnicity, national or social origin or other status.

Recommendation: Several measures are needed to enhance implementation of these human rights treaties, in particular with respect to provisions that address the right to a nationality. The CERD Committee recommended adopting measures "to ensure that access to public services is ensured to all without discrimination, whether direct or indirect, based on race, colour, descent, or national or ethnic origin."[17] The CERD has also noted its concern that laws governing entry and residence penalize arrivals from so-called "enemy States".[18] In line with these concerns, the Human Rights Committee has likewise requested that the "State party should ensure that any changes to citizenship legislation are in conformity with article 24 of the Covenant", which establishes, *inter alia*, that the right to nationality must be free from discrimination.[19]

5.3 The principle of citizenship by descent (*jus sanguinis*) and recognition of Jewish descent is prioritized over the grant of nationality based on birth on the territory (*jus soli*) or residence.[20] This does not provide adequate safeguards against statelessness as it may lead to or perpetuate statelessness of unrecognized villagers, migrants and asylum-seekers who have remained in Israel for long periods of time with no solution. In addition, UNHCR would like to note that nationality legislation and practice currently contains gaps that may lead to statelessness in individual cases. For instance:

a) The *1950 Law of Return* of the State of Israel permits persons of Jewish origins to acquire Israeli citizenship.[21] However, should the authorities find or believe that evidence presented

[17] CERD/C/ISR/CO/13, 14 June 2007.
[18] *Id.*
[19] CCPR/CO/78/ISR, 21 August 2003.
[20] On the one hand the *Nationality Law 5712-1952* stipulates that the acquisition of Israeli citizenship may be acquired by birth, the law of return, residence or naturalization and on the other hand it reserves the acquisition of nationality by residence and naturalization to a series of legal dispositions and the Ministry of Interior's approval.
[21] The Law of Return gives the right to migrate, to settle in Israel and to apply for citizenship to those who "*were born of a Jewish mother or has become converted to Judaism and who is not a member of another religion*", 5710-1950, National Legislative Bodies.
See http://www.unhcr.org/refworld/category,LEGAL,,,ISR,3ae6b4ea1b,0.html.

to support Jewish origins of the applicant are forged, the applicant will be deprived of his or her Israeli citizenship leading to statelessness among such persons residing in Israel, especially where the person does not possess any other nationality. This remains a problem for a large number of persons from the Former Soviet Union who attempted to acquire Israeli citizenship. Deprivation of citizenship under these grounds raises concerns regarding the creation of statelessness. As a general rule, individuals must not be deprived of their nationality if they would be rendered stateless. International standards enshrined in article 8 of the *1961 Convention* provide for an exception to this rule where nationality was obtained by misrepresentation or fraud, but as an exception to a general rule, it must be interpreted narrowly, observe the principle of proportionality, and ensure that nationality is not deprived without due process.[22]

b) Part 1-3 (A) of the *Israel Nationality Law* grants Israeli citizenship to "persons who remained in Israel from the establishment of the State in 1948 until the enactment of the Nationality Law of 1952, and who were registered under the 1949 Registration of Inhabitants Ordinance, and became Israeli citizens by residence or by return." Following multiple wars and displacements, representatives of Azazma Bedouins living in the Negev Desert of Israel, who fulfilled the aforementioned conditions of the *Nationality Law*, were given Israeli citizenship. However, some members of this group, as well as other groups, have not been able to prove their residency on Israeli territory prior to 1948 and thus, have remained stateless.

Recommendations:

- Ratify the *1961 Convention* and review nationality legislation and existing procedures to ensure compliance with international standards.
- Adopt flexible policies that allow persons to submit multiple and alternate forms of proof to demonstrate their legal eligibility for nationality, both under the 1950 *Law of Return* and the 1952 *Israel Nationality Law*. This will ensure that qualifying individuals can secure the nationality they are entitled under the law, while also diminishing pressures for eligible individuals to resort to the use of forged documents.

Issue 6: <u>Racism and xenophobia</u>

UNHCR and our implementing partners report rising xenophobia in the Israeli public towards, *inter alia*, migrants and asylum-seekers. There are signs that public awareness is on the increase; unfortunately this heightened awareness is often characterized by negative attitudes towards African asylum-seekers. In the past year, UNHCR has become aware of several violent attacks on asylum-seekers from Africa. At least ten asylum-seekers, mainly from Eritrea, have been severely beaten or stabbed and three incidents of asylum-seekers' apartments being firebombed have been confirmed in 2012. In the first half of 2013, three incidents of asylum-seekers being beaten have been reported and confirmed.
UNHCR is concerned by the xenophobic statements made by some public officials and journalists in Israel, who often use regular news broadcasts and the media to target and stigmatize asylum-seekers, rather than countering such negative attitudes.[23]

[22] This includes the right of the person concerned to have a fair hearing by an independent body on the matter of whether she or he will be deprived of nationality. See Article 8(4) 1961 Convention on the Reduction of Statelessness.
[23] See Hotline for Migrant Workers report, Cancer in our Body, http://www.hotline.org.il/english/pdf/IncitementReport_English.pdf

Recommendation: Ensure that adequate protection against hate speech and racial violence is provided and promote respect for the principle of non-discrimination, particularly for Africans seeking asylum in Israel.

Issue 7: Lack of permanent residence status for long-term asylum-seekers, migrants and refugees

There are a large number of migrants, asylum-seekers and recognized refugees who have been residing in Israel for more than five years, but have not been granted permanent residence status. They remain without the possibility for naturalization, equal treatment or access to government services. Additionally, many of these non-citizens, mainly asylum-seekers, have children born in Israel, but the children are left without access to basic social welfare services. According to the NGO Physicians for Human Rights, one of a few organizations providing pre- and postnatal care to mothers who cannot access Israeli health services, their clinic treated 371 infants born to asylum-seeker and migrant mothers from 2009 to 2011. With an increasing number of female asylum-seekers (now approximately 15% of the total asylum-seeker population) and migrants over the past year, the birth rate amongst this group is rising. In March 2013, the director of Ichilov hospital in Tel Aviv stated that each month over 60 children are born in the hospital to Africans without a status in Israel. UNHCR and partners estimate that over 2000 children of asylum-seekers have been born in Israel since 2009. Further, some recognized refugees have been living in Israel for over ten years without permanent residency status.

For recognized refugees, permission to reside in Israel is subject to review every one to three years. A group of refugees from Darfur have been in Israel since 2005 and have had their visa status reviewed every six months. There were more than 250 Ivorian and more than 200 South Sudanese asylum-seekers who have been in Israel for more than five years, and more than 50 Ivorians who have been living in Israel for ten years. None of the South Sudanese who applied for asylum have been granted refugee status or a visa to permanently remain in Israel. At present the Government continues to review refugee claims of persons from Côte d'Ivoire with the intention to return them to their country of origin. Although the majority is indeed no longer at risk of persecution upon return to Côte d'Ivoire at this time, many have children whose first language is Hebrew and have to a large degree, successfully integrated in Israel.

UNHCR strongly discourages the regular review of the status of refugees, in view of article 34 of the *1951 Convention*, which urges States "as far as possible [to] facilitate the assimilation and naturalization of refugees." UNHCR is concerned that regular reviews will result in a state of uncertainty for many refugees, which would not be in the spirit of the Convention. While cessation of refugee status is permitted by the *1951 Convention*, UNHCR would like to emphasize the need for the country of origin to have undergone "fundamental, stable and durable changes", requiring an assessment of the general human rights situation and the particular cause of fear of persecution; and that proper procedures for exemption from cessation are in place.[24] Where the cessation clauses are applied on an individual basis, it should not be done for the purposes of a re-hearing *de novo*. In addition, in Conclusion No. 69, the Executive Committee recommended that States consider "appropriate arrangements"

[24] UNHCR, Guidelines on International Protection No. 3: Cessation of Refugee Status, 7 May 2002, para. 19-22, (at: http://www.unhcr.org/refworld/docid/3e50de6b4.html) and ExCom Conclusion No. 69 (XLIII), Cessation of Status, 1992, at (e), see also: UNHCR, Guidelines on Exemption Procedures in Respect of Cessation Declarations, December 2011 at: http://www.unhcr.org/refworld/docid/4eef5c3a2.html).

for persons “who cannot be expected to leave the country of asylum, due to a long stay in that country resulting in strong family, social and economic links.”

A State’s responsibility to provide permanency for refugees also acts as a burden-sharing mechanism for Convention members. States parties often grant permanent residence status to refugees in their territories after several years, eventually leading to their integration and naturalization. Given the large number of asylum-seekers coming from Africa to Europe over the past ten years, many countries, including for example Spain, Italy, Greece and France have provided permanent residence to thousands of refugees.

Recommendations:
- Eliminate the bars to permanent residence status and naturalization of all non-Jewish asylum-seekers and refugees and allow for a permanent status for recognized refugees who have been able and willing to locally integrate in Israel.
- Discontinue the practice of periodic reviews of the validity of refugee status and apply cessation clauses in line with the spirit of the *1951 Convention* and UNHCR’s guidelines.

Human Rights Liaison Unit
Division of International Protection
UNHCR
September 2013

ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies - Universal Periodic Review:

ISRAEL

We would like to bring your attention to the following excerpts, taken directly from Treaty Body Concluding Observations reports relating to issues of interest and concern to UNHCR with regards to Israel.

Committee on Elimination of Racial Discrimination
CERD/C/ISR/CO/14-16, 80th session
9 March 2012

22. The Committee notes the State party's efforts to accept and host asylum-seekers and refugees on its territory and the protection framework afforded to migrant workers against potential abuses-by employers. The Committee is, however, concerned at the stigmatization of migrant workers on the basis of their country of origin, as suggested by the enactment of the 2012 Law to Prevent Infiltration, pursuant to which irregular asylum seekers can be imprisoned for at least three years upon entry into Israel and asylum-seekers from "enemy states" can serve life sentences (Articles 2 and 5(d) (iii) of the Convention).

Recalling its General Recommendation 30 (2004) on discrimination against non-citizens, the Committee urges the State party to amend the Law to Prevent Infiltration and any other legislation aimed at discriminating against asylum-seekers or denying refugees, on the basis of their national origin, the protection guaranteed under the 1951 Geneva Convention relating to the Status of Refugees.

Committee on Economic, Social, and Cultural Rights
E/C.12/ISR/CO/3, 47th session
16 December 2011

Principal subjects of concern and recommendations
20. The Committee is concerned that the Citizenship and Entry into Israel Law (Temporary Provision) 5763-2003, as amended in 2005 and 2007, imposes severe restrictions on family reunification. (art.10)

The Committee urges the State party to guarantee and facilitate family reunification for all citizens and permanent residents irrespective of their status or background, and ensure the widest possible protection of, and assistance to, the family.

21. The Committee is concerned that the State party continues to be a country of destination for trafficking in persons (art.10).

The Committee calls on the State party to ensure full and effective implementation of its Anti-Trafficking Law and the two national plans to combat trafficking in persons. It

urges the State party to take all appropriate measures to ensure that all perpetrators are prosecuted and brought to justice, and that victims have access to adequate protection and assistance.

31. The Committee is concerned that the National Health Insurance Law excludes persons who are not in possession of a permanent residence permit, denying in practice the access to adequate health care for Palestinians with temporary permits, migrant workers as well as refugees. The Committee is also concerned about the infant and maternal mortality rates among the Arab Israeli and Bedouin population groups (art.12).

The Committee recommends that the State party extend the coverage under the National Health Insurance Law to persons not in possession of a permanent residence permit, so as to ensure universal access to affordable primary health care for all. The Committee also urges the State party to intensify its efforts to lower the infant and maternal mortality rates among the Arab Israeli and Bedouin population groups.

According to the Procedure, if an asylum-seeker has committed a crime in the past that endangers national security or public safety and has served her or his criminal sentence or has been arrested on suspicion of endangering national security or public safety and is still in the custody of the police and the police has no intention to prosecute him/her (due to lack of sufficient evidence to prosecute or to a lack of public interest), the police will submit the case to the Population, Immigration and Border Authority (PIBA) to make the decision whether the person should be transferred to the administrative procedure, including detention. If PIBA makes the decision that there is indeed insufficient evidence and the person does not present a real harm to the public order, then the case is referred back to the police who will close the case and release the asylum-seeker.

Committee against Torture
CAT/C/ISR/CO/4, 42nd session
23 June 2009

Non-refoulement and risk of torture
22. While the Committee is aware of the fact that Israel hosts increasing numbers of asylum-seekers and refugees on its territory, and whereas the principle of non-refoulement under article 3 of the Convention has been recognized by the High Court as a binding principle, the Committee regrets that this principle has not been formally incorporated into domestic law, policy, practices or procedure. The responses submitted by the State party all refer only to its obligations under the 1951 Convention Relating to Refugees and its 1967 Protocol, but do not even allude to its distinct obligations under the Convention.

The principle of non-refoulement should be incorporated into the domestic legislation of the State party, so that the asylum procedure includes a thorough examination of the merits of each individual case under article 3 of the Convention. An adequate mechanism for the review of the decision to remove a person should also be in place.

23. The Committee notes with concern that, under article 1 of the draft amendment to the 1954 Infiltration to Israel Law (Jurisdiction and Felonies) Act, which was passed on 19 May 2008 in first reading by the Knesset, any person having entered Israel illegally is

automatically presumed to constitute a risk to Israel's security and falls within the category of "infiltrator" and can therefore be subjected to this law. The Committee is concerned that article 11 of this draft law allows Israeli Defence Forces (IDF) officers to order the return of an "infiltrator" to the State or area of origin within 72 hours, without any exceptions, procedures or safeguards. The Committee considers that this procedure, void of any provision taking into account the principle of non-refoulement, is not in line with the State party's obligations under article 3 of the Convention. The Israeli Government reported 6,900 "infiltrators" during 2008.

The Committee notes that the draft amendment to the Infiltration to Israel Law, if adopted, would violate article 3 of the Convention. The Committee strongly recommends that this draft law be brought in line with the Convention and that, at a minimum, a provision be added to ensure an examination into the existence of substantive grounds for the existence of a risk of torture. Proper training of officials dealing with immigrants should be ensured, as well as monitoring and review of those official's decisions to ensure against violations of article 3.

24. The Committee notes with concern that, on the basis of the "Coordinated Immediate Return Procedure", established by Israeli Defense Force order 1/3,000, IDF soldiers at the border – whom the State party has not asserted have been trained in legal obligations under the Convention – are authorized to execute summary deportations without any procedural safeguards to prevent refoulement under article 3 of the Convention.

The Committee notes that such safeguards are necessary for each and every case whether or not there is a formal readmission agreement or diplomatic assurances between the State party and the receiving State.

Committee on the Elimination of Discrimination against Women
CEDAW/C/ISR/CO/5, 48th session
5 April 2011

Trafficking and exploitation of prostitution
30. The Committee underlines the State party's continuous efforts to address the issue of trafficking in women and girls, including the enactment of the Anti-Trafficking Law, which has broadened the definition of trafficking, as well as the adoption of the two National Plans to combat trafficking in persons for purposes of prostitution, and trafficking in persons for purposes of slavery and forced labour. While noting the extensive information provided in the fifth report and the State party's replies to the list of issues, including that there has been a sharp decline in the number of women trafficked to Israel for purposes of prostitution, the Committee remains concerned at the prevalence of trafficking in the State party as a destination country, as well as reports of internal trafficking. In addition, it is concerned at the limited information provided on the existence and implementation of regional and bilateral memorandums of understanding and/or agreements with other countries on trafficking. Furthermore, the Committee is concerned that female asylum seekers and migrants entering Israel through the Sinai desert are at high risk of becoming victims of trafficking.
31. The Committee urges the State party to fully implement article 6 of the Convention, including through:

(a) Effective implementation of its anti-trafficking legislation as well as its two national plans on trafficking, in order to ensure that perpetrators are punished and victims adequately protected and assisted;
(b) Strengthening of its efforts at international, regional and bilateral cooperation with countries of origin and transit so as to address more effectively the causes of trafficking, and improve prevention of trafficking through information exchange; and
(c) Provision of information and training on the anti-trafficking legislation to the judiciary, law enforcement officials, border guards and social workers in all parts of the country; and
(d) Provision of immediate and effective treatment, including medical, psycho-social and legal assistance for women in need of international protection, who are victims of trafficking and sexual slavery, in transit to Israel.

Other disadvantaged groups of women
46. While noting the information provided in the fifth report in respect of women with disabilities and women belonging to ethnic minorities, especially Israeli Arab women, the Committee is concerned at the very limited information provided regarding certain other disadvantaged groups of women and girls, including asylum-seeking women, refugee women, internally displaced women, stateless women and older women. The Committee is also concerned that those women and girls often suffer from multiple forms of discrimination, especially with regard to access to education, employment and health care, protection from violence and access to justice. The Committee is further concerned that gender-based persecution is not recognized by the State party as a ground for refugee status.
47. The Committee recommends that the State party:
(a) Provide, in its next report, comprehensive information, including sex-disaggregated data and trends over time, on the de facto situation of these disadvantaged groups of women and girls in all areas covered by the Convention, as well as on the impact of measures taken and results achieved in the implementation of policies and programmes for these women and girls; and
(b) Consider including gender-based persecution as a ground for refugee status, in accordance with the Office of the United Nations High Commissioner for Refugees (UNHCR) Guidelines on International Protection relating to gender-related persecution.

Committee against Torture
CAT/C/ISR/CO/4, 42nd session
23 June 2009

Non-refoulement and risk of torture
22. While the Committee is aware of the fact that Israel hosts increasing numbers of asylum-seekers and refugees on its territory, and whereas the principle of non-refoulement under article 3 of the Convention has been recognized by the High Court as a binding principle, the Committee regrets that this principle has not been formally incorporated into domestic law, policy, practices or procedure. The responses submitted by the State party all refer only to its obligations under the 1951 Convention Relating to Refugees and its 1967 Protocol, but do not even allude to its distinct obligations under the Convention.

The principle of non-refoulement should be incorporated into the domestic legislation of the State party, so that the asylum procedure includes a thorough examination of the

merits of each individual case under article 3 of the Convention. An adequate mechanism for the review of the decision to remove a person should also be in place.

23. The Committee notes with concern that, under article 1 of the draft amendment to the 1954 Infiltration to Israel Law (Jurisdiction and Felonies) Act, which was passed on 19 May 2008 in first reading by the Knesset, any person having entered Israel illegally is automatically presumed to constitute a risk to Israel's security and falls within the category of "infiltrator" and can therefore be subjected to this law. The Committee is concerned that article 11 of this draft law allows Israeli Defence Forces (IDF) officers to order the return of an "infiltrator" to the State or area of origin within 72 hours, without any exceptions, procedures or safeguards. The Committee considers that this procedure, void of any provision taking into account the principle of non-refoulement, is not in line with the State party's obligations under article 3 of the Convention. The Israeli Government reported 6,900 "infiltrators" during 2008.

The Committee notes that the draft amendment to the Infiltration to Israel Law, if adopted, would violate article 3 of the Convention. The Committee strongly recommends that this draft law be brought in line with the Convention and that, at a minimum, a provision be added to ensure an examination into the existence of substantive grounds for the existence of a risk of torture. Proper training of officials dealing with immigrants should be ensured, as well as monitoring and review of those official's decisions to ensure against violations of article 3.

24. The Committee notes with concern that, on the basis of the "Coordinated Immediate Return Procedure", established by Israeli Defense Force order 1/3,000, IDF soldiers at the border – whom the State party has not asserted have been trained in legal obligations under the Convention – are authorized to execute summary deportations without any procedural safeguards to prevent refoulement under article 3 of the Convention.

The Committee notes that such safeguards are necessary for each and every case whether or not there is a formal readmission agreement or diplomatic assurances between the State party and the receiving State.

Committee on the Rights of the Child
Optional Protocol on the involvement of children in armed conflict
CRC/C/OPAC/ISR/CO/1, 53rd session
4 March 2010

Positive aspects
7. The Committee welcomes information provided by the State party that asylum-seeking children who have been recruited or used in armed conflict have been granted refugee status on the basis of having been used as child soldiers in armed conflict.

Human Rights Committee
CCPR/C/ISR/CO/3, 99th session
3 September 2010

Principal subjects of concern and recommendations

14. The Committee notes with concern the issuance by the General Officer Commander of the Israeli Occupation Force of military orders No. 1649 "Order regarding security provisions" and No. 1650 "Order regarding prevention of infiltration", amending military order No. 329 of 1969 and widening the definition of "illegal infiltration" to persons who do not lawfully hold a permit issued by the military commander. While noting the assurances by the State party's delegation that the amended military orders would not affect any residents of the West Bank or anybody holding a permit issued by the Palestinian National Authority, the Committee is concerned at information that, with the exception of 2007–2008, Israel has not processed any applications for renewal of West Bank visitor permits of foreign nationals, including spouses of West Bank residents, and applications for permanent residency status, which therefore leaves many long-term residents, including foreigners, without permits. It is further concerned at information that persons in the West Bank holding residency permits with addresses in the Gaza Strip are being forcibly returned, including those with entry permits into the West Bank. The Committee is also concerned that, under the amended military orders, deportations may occur without judicial review if a person is apprehended less than 72 hours after entry into the territory. While noting the creation of a committee for the examination of deportation orders, the Committee is concerned that it lacks independence and judicial authority, and that review of a deportation order is not mandatory (arts. 7, 12 and 23).

The State party should carry out a thorough review of the status of all long-term residents in the West Bank and ensure that they are issued with a valid permit and registered in the population register. The State party should refrain from expelling long-term residents of the West Bank to the Gaza Strip on the basis of their former addresses in the Gaza Strip. In light of the State party's obligations under article 7, the Committee recommends that the State party review military orders No. 1649 and 1650 to ensure that any person subject to a deportation order is heard and may appeal the order to an independent, judicial authority.

15. Recalling its previous recommendation in paragraph 21 of the preceding concluding observations (CCPR/CO/78/ISR), the Committee reiterates its concern that the Citizenship and Entry into Israel Law (Temporary Provision), as amended in 2005 and 2007, remains in force and has been declared constitutional by the Supreme Court. The Law suspends the possibility, with certain rare exceptions, of family reunification between an Israeli citizen and a person residing in the West Bank, East Jerusalem or the Gaza Strip, thus adversely affecting the lives of many families (arts. 17, 23 and 24).

The Committee reiterates that the Citizenship and Entry into Israel Law (Temporary provision) should be revoked and that the State party should review its policy with a view to facilitating family reunifications for all citizens and permanent residents without discrimination.