Infiltrators or Refugees? African Asylum Seekers in Israel and Their Clash with the Jewish State

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BACKGROUND: AFRICAN ASYLUM SEEKERS IN ISRAEL

Although Israel was one of the first signatories of the UN Refugee Convention of 1951, the nation-state has not been upholding its obligations, especially for African asylum seekers. A complication lies in its citizenship requirements, which assert its sovereignty and serve to maintain the Jewish majority in the state. In 1954, the Israeli government passed a law entitled the “Prevention of Infiltration Law.” This law prohibits unlawful entry of individuals from the majority of countries surrounding Israel, to prevent threats to Israel’s security.\(^1\) It was originally meant to target primarily individuals from neighboring areas, such as Palestine, Lebanon, Egypt, or Syria. In 2012, this law was amended to include all irregular border-crossers, including African asylum seekers, in order to preserve the security of Israel’s Jewish identity.\(^2\) It was created amidst reports of anti-African asylum-seeker rhetoric from government officials, such as Interior Minister Ei Yishai. In an interview with an Israeli news-source, Yishai stated that “this country belongs to us, to the white man,” and that he planned to use “all the tools to expel the foreigners, until not one infiltrator remains.”\(^3\)

Words like these fueled the amendment to the original law, and legitimized the ability of authorities to detain illegal migrants for up to three years without trial or deportation.\(^4\) This amendment also disqualified Eritrean and Sudanese asylum seekers from seeking refugee status. Many amendments have been passed since then. The policy toward Sudanese and Eritrean asylum seekers was rescinded in 2013, and a 2015 amendment prevented detainment beyond a year.\(^5\) Despite these small steps toward justice, the prospects for African asylum seekers in Israel are grim at best.

According to a report by Human Rights Watch, large numbers of African asylum seekers began entering Israel from Egypt in 2007.\(^6\) This influx came to a halt in 2012, when the Israeli
government built a fence along the border with Egypt, and about 100 individuals have entered since. Seventy percent of the 45,000 asylum seekers currently in Israel have fled from Eritrea, and twenty percent have fled from Sudan (ten percent are from a variety of African countries, including Ethiopia). Their entitlement to refugee status under the 1951 Refugee Convention is indisputable. Eritrea has been internationally recognized as a human rights violator and is known as the “North Korea of Africa.” It is notorious for its indefinite conscription policies that trap Eritreans in forced labor positions without an end-date, under the threat of detainment, torture, and imprisonment. The majority of Sudanese asylum seekers flee from the ongoing violence, ethnic cleansing, and drought in Darfur. When I visited with asylum seekers at Holot, the major detention facility for African asylum seekers, I met a man named Jack whose entire village had been destroyed. After a journey filled with devastating loss and violence, he made it to Israel, and was eventually detained for being an “infiltrator.”

Individuals like Jack inarguably qualify as possessing a well-founded fear of persecution due to race, religion, nationality, or membership of a particular social group or political opinion per the 1951 Refugee Convention, but African asylum seekers entering Israel are unlikely to receive recognition as refugees. 0.5% of African asylum seeker claims have been recognized, as opposed to eighty to ninety percent in other democratic countries. The current policy gives African asylum seekers temporary protection group status under a conditional release document, which grants them the right to non-refoulement while denying many social, labor, or health benefits, some of which are supposed to be guaranteed to all residents of Israel. This increases their susceptibility to poverty and employer abuse. African asylum seekers may also be financially coerced into departing to the third-party countries of Uganda and Rwanda. This
deportation guarantees no citizenship or residency rights upon their arrival, and creates a loophole that may result in deportation back to their countries of origin.\textsuperscript{14}

Single men are also forced to stay at a temporary detention facility, Holot, under abhorrent conditions for up to twelve months. Holot was created in the middle of the Negev in 2014, and blindsided thousands of African asylum seekers.\textsuperscript{15} After living in the country for several years, and renewing their conditional release documents every few months to prevent deportation, they would go to renew their documents and receive a Holot summons instead. The facility can hold up to 3,300 people, and detainees must check in every night.\textsuperscript{16} Although the Israeli High Court has repeatedly found that detaining someone without a trial is unconstitutional, amendments have failed to successfully close the detention facility. In 2015, a new amendment reduced detention length to one year, after which asylum seekers are released and temporarily protected, unless their asylum claims are rejected.\textsuperscript{17} Rejected asylum seekers must leave the country or risk detainment at a closed detention facility.

The Israeli government does not currently have a defined plan for confirming refugee status. The government’s policies are transparently xenophobic and violate the Refugee Convention in countless ways, yet the issues of state sovereignty and Israel’s self-representation as a Jewish democracy present themselves. How can one effectively argue that human rights of asylum seekers should be prioritized over maintenance of state sovereignty and the security of a Jewish majority?

**ISRAEL AS A JEWISH STATE AND ITS IMPACT ON NATURALIZATION POLICIES**

If it is apparent that African asylum seekers are being treated without the dignity or liberty that they deserve, then why is the Israeli government so stringent on immigration
policies? By clarifying the policies and understanding the justifications behind their exclusionary nature, one can more critically examine their viability. Israel’s immigration policies are unique in their assertion of the “Right of Return,” to ensure that Jews worldwide will always have a homeland. According to Israel Ministry of Foreign Affairs, the Law of Return allows for those with a Jewish grandparent, parent, or spouse to apply for citizenship.\(^{18}\) The naturalization eligibility for those who fall outside this law appears to be fairly broad. Essentially, people must live in Israel for three out of five years after they file an application for permanent residency. This policy, however, is up to the Ministry’s discretion, and to the sovereignty of the state. The Prevention of Infiltration law imposed a severe limitation on naturalization eligibility, and has created a unique naturalization process that depends not on residency in the territory, but on ethnic background.

Israel’s naturalization laws maintain a double-standard of excluding non-Jewish immigrants while simultaneously actively encouraging and accepting Jewish immigrants.\(^{19}\) This policy serves to secure the Jewish nature of the state, which is a fundamental principle of its existence. Rebeca Raijman, an expert on international migration and a professor of sociology and anthropology at the University of Haifa, asserts that Israeli citizenship differs from the liberal conception of citizenship, because Israeli citizenship is not an accessible conference of social rights that is available to any individual.\(^{20}\) While membership provides social rights, membership is not readily accessible based on traditional factors like fulfilling residency requirements. Those pursuing citizenship are not all on equal ground, and individuals who fail to fit the ethnic requirements are “perceived as posing a threat to the cultural and national homogeneity of the society.”\(^{21}\) In Israel, maintaining a homogenous national identity is a sacred concept that serves as a justification for exclusionary immigration policies toward non-Jews and
African asylum seekers in particular. The prevailing narrative classifies African asylum seekers as “infiltrators” and a threat to the security of the Jewish national identity. Raijman writes, “The sense of cultural threat reflects fear of the intrusion of values and practices that are perceived as both alien and potentially destructive of the national culture.” When the minority group significantly diverges from the cultural practices and ethnic makeup of the majority group, the majority group perceives this divergence as especially threatening. In this case, the African asylum seekers threaten the “social and ethnic composition of the nation and the Jewish character of the state” because they are classified as especially “other.”

Raijman’s research shows that Israelis believe that conference of social rights should depend upon citizenship and ethno-national origin. Her findings demonstrate that the negative mentality toward out-group members is deeply engrained in Jewish Israeli society, and may influence citizenship policies. This is problematic when citizens dictate the societal structure. Israel prides itself on being Jewish and democratic, but as long as the government limits rights accessibility, can Israel truly be classified as a democracy? If Israel classifies itself as a democracy, it should have obligations toward its non-Jewish residents to ensure equal accessibility to naturalization procedures. This should especially apply for asylum seekers with legitimate claims that align with the terms of the 1951 Refugee Convention. If Israel can be considered a democracy, then it must follow a democratic structure. The question stands, however, regarding whether Israel constitutes a democracy. If Israel is not a democracy, it may not have the obligation to grant membership to out-group members.

ISRAEL: A DEMOCRACY?
In order to understand whether Israel’s citizenship policies are justifiable, one must understand how to classify Israel in regard to its governmental and societal structure. This will allow for a better understanding of Israel’s obligations to its citizens, to its non-citizens, and more specifically, to its asylum-seeking residents.

The Israeli Declaration of Independence declared Israel to be a “Jewish State.” In 1985, the Israeli Knesset, the legislative body of Israel, created an amendment to its basic law that included a mention of the “Jewish and democratic nature” of Israel. It may be challenging to understand what a “Jewish and democratic” state entails. If Israel was meant to be a democracy for Jews, how can it be classified as a democracy? Sammy Smooha, an Israeli professor of sociology, defines Israel as an ethnic democracy. In his words, “Ethnic democracy meets the minimal and procedural definition of democracy, but in quality if falls short of the major Western civic (liberal, consociational and multicultural) democracies.” This seems to fit the nature of Israeli government and society well, because Israel prides itself on its democratic nature for its Jewish citizens, but lacks the political flexibility to qualify itself as a total democracy. All residents are not equal, and minority populations perpetually lack the legitimacy of the majority group. Rights for non-citizens are severely limited, especially for “infiltrators,” and citizenship depends upon being Jewish. Smooha writes, “Ethnic democracy suffers from an inherent contradiction between ethnic ascendance and civic equality.” This contradiction has fueled the tensions behind the government generally refusing to grant non-Jews, and minorities, such as Palestinians, migrant workers, and asylum seekers, citizenship.

If everyone has equal access to naturalization processes, and if all citizens have equal rights, then Israel will lose its Jewish ethnic majority. This majority is ethnic, and not theological, in nature, in the sense that all Jews have the right to self-determination, regardless of
whether they are religious or secular. Although there have been conflicts between religious and secular camps regarding legislation, both parties agree that Israel must remain Jewish in nature.

Smooha’s classification of Israel as an ethnic democracy, however, does not disqualify it from utilizing the label of “democracy.” The term “ethnic” and “democracy” clash, especially considering that the word “democracy” is generally associated with equality in access to naturalization procedures, and popular sovereignty based on those who reside in the territory. The prioritization of the Jewish majority warrants a deeper criticism of Israel’s structure as a nation-state, and a relabeling that eliminates the presence of the word “democracy” and all the qualities associated with it. Oren Yiftachel, an Israeli professor in political geography, classifies Israel as an ethnocracy, because “ethnocracies, despite exhibiting several democratic features, lack a democratic structure.” Israel lacks central democratic tenets, including “equal citizenship, the existence of a territorial political community (the demos), universal suffrage, and protection against the tyranny of the majority.” Democracy is formed through a border, rather than through a “non-territorial form of self-determination.” It is also important to consider that the deeply enshrined Jewish character of the state can never be removed democratically. An ethnic democracy as a label would be a contradiction, because the Jewish nature of the state, and the requirements for citizenship, are immune to democratic processes. If Israel is to justify its claims for maintaining the Jewish state and rejecting African asylum seeker claims, it must deny itself of the classification as a democracy.

Yiftachel further classifies Israel as an ethno-nationalist entity, because it is a sovereign state that prioritizes ethnic self-determination. Ethnic self-determination constitutes each member of the ethnic group having the right to independence within the state. Israel’s ethno-national concept may justify its exclusionary policies, because it is a sovereign state that
prioritizes remaining a Jewish state. While discussing Israel’s guiding principles, Yiftachel writes, “The dominance of the ethno-national concept generates forms of ethnic territoriality which view control over state territory and its defense as central to the survival of the group in question...”34 Yiftachel asserts that Israel’s ethno-national concept is a deliberate strategy that results in manipulative, xenophobic policies to perpetuate the “Judaization” of Israel’s territory. Despite his critique and his suggestions for turning Israel into a democracy, he fails to assert that Israel lacks the entitlement to remain a sovereign ethnocracy. After all, he concedes that Israel has the “international legitimacy attached to national sovereignty.”35 Does Israel’s legitimacy as a sovereign nation eliminate its obligation toward its non-citizens, including asylum seekers?

STATE SOVEREIGNTY VERSUS INTERNATIONAL OBLIGATIONS

The UN General Assembly recognized the right of the Jewish people to establish their own nation-state in November 1947, and Israel became its own sovereign nation in May 1948 (Declaration of Independence, 1948). The Israeli Declaration of Independence emphasizes the existence of Israel as a Jewish state, and its sovereignty entitles Israel to its own citizenship policies. Arguably, if Israel was created as a Jewish state, then its sovereign power allows for a construction of naturalization laws that preserve the Jewish state.

Saskia Sassen, an expert on international human migration, recognizes the desire of states to maintain sovereignty in their immigration decisions, and maintain their “capacity for unilateral action.”36 She argues, however, that because immigration does not exist in a bubble, then immigration policies cannot exist in a bubble. They must be examined under that consideration of the interdependence of nations. This is a valuable point, because Israel does not isolate itself in other realms. Israel must reevaluate its immigration approach, due to its incongruity with its
efforts to engage in internationalism. After all, Israel is member of the United Nations, a signatory of the 1951 Refugee Convention, and a signatory of the ICCPR and ICESCR. Israel has not incorporated the 1951 Convention into domestic law, which still lacks formal guidelines for evaluating refugee status, and has not translated the document into Hebrew, meaning that Israeli officials have been unable to review Israel’s international obligations. Furthermore, its financial pressure upon individuals to return to their countries of origin or dangerous third-party countries violates non-refoulement. Israel’s exclusionary citizenship policies and failure to adhere to its international obligations contradicts its internationalist efforts.

It is also problematic in itself to conflate asylum seekers with more traditional immigrants. Naturalization policies must pass international muster and secure human rights for all residents in a state’s territory, but they are more flexible and variable than refugee status determination processes. Granting asylum is not a matter of fitting into Israel’s version of a naturalization policy. Maintaining a Jewish state does not exempt Israel from the 1951 Convention, even when it is inconvenient to adhere to its principles. When Israel denies African asylum seekers of refugee status, despite their qualifications, and subjects them to arbitrary detention and minimal social support, it actively violates its obligations to adhere to human rights covenants.

Israel cannot be an autonomous, isolated state while simultaneously electing to be held accountable for human rights violations. This applies to its naturalization process and its obligation toward refugees. While Israel has the liberty to create its own naturalization procedures, they must not collide with Israel’s international commitments nor deny human rights to individuals residing in Israel’s territory. Further evaluation is required to determine whether Israel can remain a Jewish state and have immigration policies that do not violate human rights
doctrines. At a minimum, however, Israel must relinquish its sovereignty over immigration matters in order to keep up with its internationalist aspirations. Sassen writes, “The invocation of international covenants, particularly human rights instruments, to make national policy” demonstrates “a move away from statism—the absolute right of states to represent their people in international law and international relations...”.38 Israel desires sovereignty in immigration matters. Its efforts to remain an important member of the international community, which is has increasingly transitioned into a human rights regime, makes this sovereignty impossible. Israel must therefore reevaluate its approach to immigration in order to remain a viable UN member.

Israel’s violations of its obligations further manifests in its treatment of asylum seekers as “infiltrators.” This false, simplistic narrative is disingenuous to the complex reality. In the words of Sassen, “While a national state may have the power to write the text of an immigration policy, it is likely to be dealing with a complex, deeply embedded, and transnational process that is can only partly address or regulate through immigration policy as conventionally understood.”39 Regardless of Israel’s efforts to alienate African asylum seekers, they are not leaving the country. They have fled devastating circumstances in search of sanctuary, and seek safety and security. They will go where they can, and Israel’s disenfranchisement of asylum seekers only serves as a detriment to their efforts to live free of persecution. Israel’s dominating narrative, which evokes a fear of compromising the Jewish majority, serves as another example of Israel’s active violation of its commitment to the 1951 Refugee Convention and the UN international covenants.

EXAMINATION OF POLICIES THROUGH HUMAN RIGHTS THEORY
Even if Israel was not a signatory of the 1951 Refugee Convention and UN international covenants, human rights obligations would not disappear. David Luban reasons that using security against outside forces (in this case, the security of the Jewish nature of the state against parties that compromise this Jewish nature) does not supersede maintenance of individuals’ human rights. He argues that human rights are meant to serve as security against abuses of governmental power. Through this reasoning, there is a danger in using security as a justification for violating human rights, because human rights are themselves a means of providing security. When all individuals’ rights are secured, the resultant effect is security of the nation-state. Therefore, violating the security of the individual takes precedent over violating the security of the state. Regardless of the argument that “it is the government’s job to protect the interests of its own citizens over those of foreigners,” prioritizing citizen rights over foreigner rights creates a problematic idea that these two sets of rights are mutually exclusive. Asylum seekers can have rights without compromising the rights of Jewish citizens to live Jewishly.

This issue especially manifests in the unjustified detention of asylum seekers without any legal counsel. The Israeli government asserts that there is an imposition upon the rights of its individual citizens, because asylum seekers take resources from legal Jewish citizens and threaten the fabric of Israeli society. Detainment of asylum seekers without trial violates human rights and does not improve security, because citizens cannot be protected from people who are not a threat to them. Judaism will not disappear if asylum seekers gain refugee status. The rights of citizens can be protected without compromising the rights of individuals seeking refugee protections. Jews can still live as Jews in a state that grants asylum seekers the rights they deserve.
CASE STUDY

Regardless of whether Israel is an ethnocracy, and regardless of whether it has signed on to international agreements, it still has an obligation, as a nation-state, to respect the human rights of individuals. This becomes especially apparent when talking to the people directly impacted by Israel’s policies. I met Aman Beyene when I visited Holot in the summer of 2015. He is a refugee and community organizer from Eritrea. When he was summoned to Holot, he had been living in Israel for eight years. Before his summons, he worked at a restaurant and received no benefits. He was paid minimum wage through a manpower agency. When I spoke to Aman at Holot, he had not seen his fourteen-year-old child in eight years.

Aman was recognized as a powerful community activist, and prided himself on spreading awareness of the struggles of African asylum seekers in Israel. He informed me that when asylum seekers are summoned to Holot, they have thirty days to prepare, and can either go to Holot or face indefinite closed detention. Not a single detainee has had his refugee-status approved, highlighting the illegitimacy of the process. Once they are released, they go back to living with temporary visas while waiting for the inevitable deportation notice.

Shortly after my trip to Holot, Aman was released from Holot due to the new amendment that restricted detainment to twelve months. Aman had been detained at Holot for seventeen months. Aman’s asylum request was denied, and he lost his right to remain in Israel, but non-refoulement prevented his deportation. He was able to find a sponsor in Canada, and just a week ago, he officially left Israel to obtain official refugee status in Canada. Due to Canada’s family reunification policies, he will be able to bring his family in Eritrea to Canada in six months. Aman’s story is a strong representation of how Israel’s priorities deny individuals of their humanity. He is David Luban’s argument in action. When Israel denied Aman of his civil
liberties, it did not strengthen the security of its Jewish population. When asylum seekers are treated like criminals for simply trying to survive, they lose their humanity. Aman was able to find a way out of Israel, but many asylum seekers do not have that option. They will continue to stay in Israel, because it is their only choice. By focusing on how to make asylum seekers leave, rather than helping them integrate, Israel is not only violating its international obligations; it is exacerbating the issue that it is trying to quell, and denying civil liberties without contributing anything to its security as a Jewish state.

**PROPOSALS FOR THE FUTURE**

To this day, Israel lacks an equitable, efficient, and coherent asylum policy, “as evidenced by…grants of protection for arbitrarily defined groups of asylum seekers, constant changes to ‘policy’ and procedures, reliance on deportation and detention, problems arising from a failure to develop a fair and independent [system]...”\[^{43}\] The benefits of accepting asylum seeker claims are numerous. Israel would gain legitimacy as the democracy it strives to be, while adhering to signatory status on international human rights doctrines. Asylum seekers would strengthen the economy, and Israel would no longer use its resources to disenfranchise this population through detention.\[^{44}\]

Asylum seekers require access to an efficient, reasonable process that guarantees their rights during and after the process. They should be allowed to contribute to the economy and thus sustain their livelihood in Israel, and they should receive benefits that, by law, are guaranteed to all residents. They should have access to integration and social support resources, and should be given the support to cope with the trauma of their past experiences. Their cases should be legitimized and they should be given indefinite residency, in order to secure their
access to the rights and resources of a nation.⁴⁵ They should no longer be detained, and Holot must be permanently shuttered. The conference of rights must not be contingent upon ethnicity and citizenship. This fuels a dangerous idea that citizenship equates personhood, and all people, as dictated by UDHR Article 3, have the right “life, liberty, and security of person.”⁴⁶ Asylum seekers deserve rights because they are fleeing persecution, but also because they are people. Although it is reasonable that citizenship would provide more social rights than residency, all people in Israel should be capable of living fulfilling, dignified lives. The question of whether Israel can remain a Jewish state requires further analysis of whether this can exist without rights being compromised. Israel cannot, however, use this policy as a cover to delegitimize asylum claims.

While many of the aforementioned necessary shifts are government-oriented, Israeli society also needs to be more receptive to African asylum seekers, and must dispel the mistruths of the “infiltrator” narrative. Raijman mentions that “the position of an ethnic or immigrant group in a society is strongly influenced by both public attitudes and government actions.”⁴⁷ Public attitudes are especially important because African asylum seekers are dealing more with the public than with the government on a daily basis. The public have the power to make African asylum seekers feel welcome. Due to the popular sovereignty of citizens, they also have the power to influence government decisions.⁴⁸ If the Israeli government and the Israeli public work to provide asylum seekers with refugee status and help them become successful members of Israeli society, then, counter to the “infiltrator” narrative, asylum seekers will benefit Israel, rather than threaten it.
CONCLUSION

Israel, as it currently exists, cannot call itself a democracy. It is an ethnocracy that has disenfranchised African asylum seekers to the extent that they lose their personhood. While state sovereignty entitles a nation-state to construct its own naturalization processes, it does not excuse the state from its international obligations and responsibilities to maintain the human rights of all residents. Israel’s security as a Jewish state must never overshadow the security of individuals’ civil liberties. The stories of individuals like Jack and Aman emphasize the urgency of creating an unbiased refugee status determination process, facilitating opportunities for social integration and support, and shifting the Israeli national narrative toward embracing those who are refugees, just as the Jews once were.
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