

The Impact of Discriminatory Legislation and Policies in Israel on the Realization of the Right of Return for Palestinian Refugees

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Law in International Context

Date of Submission: 07/06/2024

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List of Abbreviations

ACRI - The Association for Civil Rights in Israel
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women
CERD - Committee on the Elimination of Racial Discrimination
ESCWA - Economic and Social Commission for Western Asia
HCJ - Israel's High Court of Justice (Supreme Court of Israel)
HRC - United Nations Human Rights Committee
HRW - Human Rights Watch
ICC - International Criminal Court
ICCPR - International Covenant on Civil and Political Rights
ICERD - International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR - International Covenant on Economic, Social, and Cultural Rights
ICJ - International Court of Justice
IHL - International humanitarian law
IMEU - Institute for Middle East Understanding
OPT - Occupied Palestinian Territory
PCBS - Palestinian Central Bureau of Statistics
UAR - United Arab Republic (now known as Egypt)
UDHR - Universal Declaration of Human Rights
UN - United Nations
UNRWA - United Nations Relief and Works Agency for Palestine Refugees in the Near East

Maps

Figure 1

The division of land according to the 1947 UN Partition Plan. (Israel Embassy, 2024)

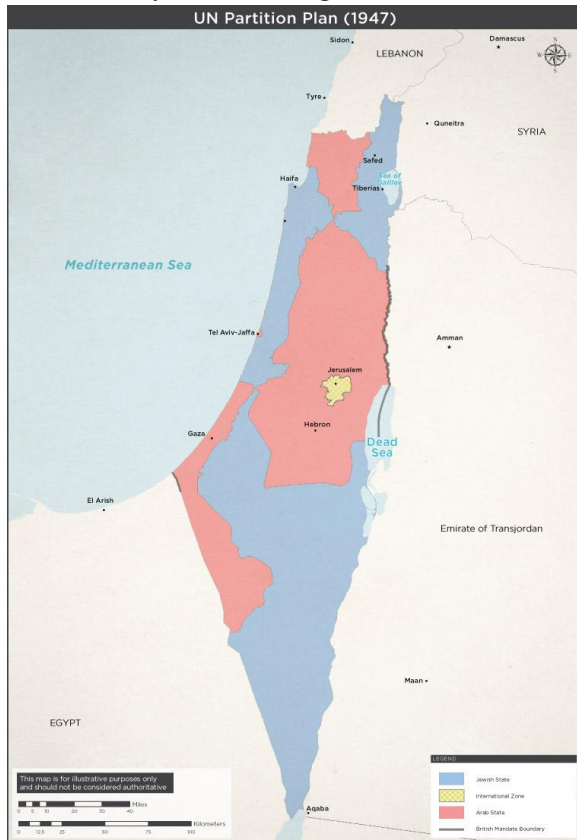


Figure 2

The division of land after the Armistice Agreement that led to The Green Line (also called the Pre-1967 Border). (1948.org.uk, 2024)

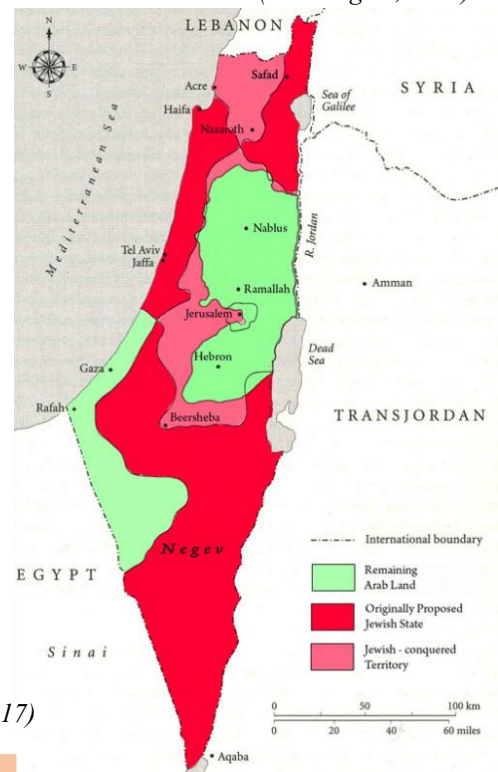
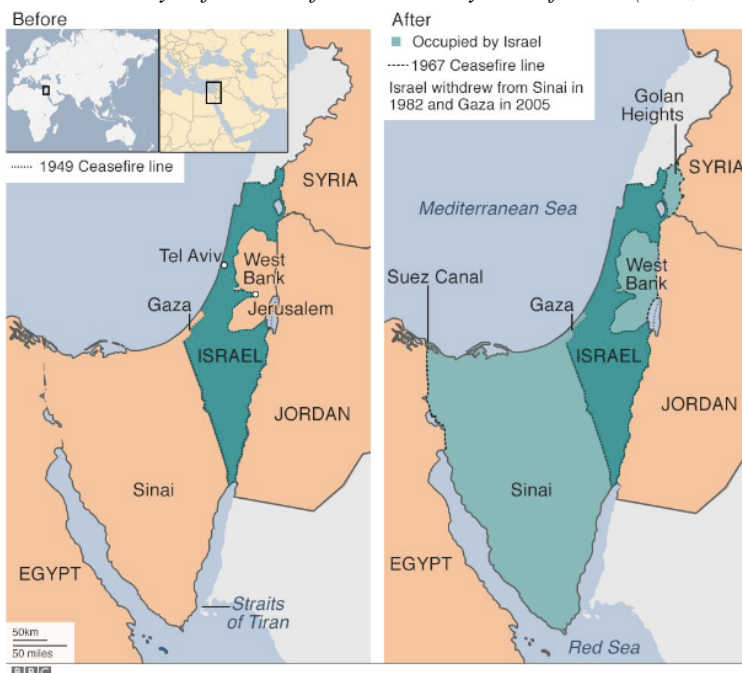


Figure 3

Israeli territory before and after the Six-Day War of 1967. (BBC, 2017)



Introduction

Since October 7th, 2023, the world has turned its eyes towards the Israel-Palestine conflict anew. We have been presented with a lot of new events taking place in this conflict, such as Israel's search for Hamas, an Islamic resistance movement whose goal is to create an Islamic state in place of Israel and subsequently dismantle the state of Israel¹, and the casualties that have fallen in Palestine and Israel as a result.² Consequently, countries around the world have given their support towards Israel or Palestine and international organisations such as the United Nations (UN) have given themselves to finding viable solutions to stopping the conflict currently taking place and helping the Palestinian refugees that have been scattered around the world. According to Albanese, approximately 8 million of the 13 million Palestinians around the world are refugees.³ While it is difficult to give an exact estimate of the number of Palestinian refugees in different countries because their status and lack of documentation in different countries often make them statistically invisible and difficult to track dispersedly, the Palestinian Central Bureau of Statistics (PCBS) estimates that by the end of 2019, there are 13.350 million Palestinians in the world of whom 5.986 million reside in Arab countries, such as Jordan, Lebanon, and Syria, and around 727,000 in foreign countries around the world.⁴ For many of these Palestinian refugees, the only solution to "adequately redress the injustice of the expulsion and dispossession."⁵ that happened during past events, is their return to their home country, or what is now known as Israel. The legal and political phenomenon that underlies this return to Israel that Palestinians hope to achieve, is the right of return. However, debates about its legal bindingness have arisen, meaning that while some scholars argue that it is a right that every State should uphold, other scholars argue that this is not the case, at least not for Palestinian refugees, and that it is less of a right and more of a suggestion⁶. Scholars are not the only ones with diverse opinions on the nature of the right of return; Israelis and Palestinians also have different views. Many Israelis find the return of Palestinians to Israel a "threat of an Arab majority diluting the Jewish character of the State of Israel and, by extension, of its survival as an ethnic majority."⁷, meaning that they think that the return of Palestinians would diminish the Jewish nature of the State which they have worked so hard to establish. Many Palestinians believe, on the other hand, that the only viable solution to the Israel-Palestine conflict and its accompanying refugee crisis is the return of those Palestinian refugees to a state in which they can enjoy collective rights and a national identity⁸. This means they think they should be able to return under the right of return and be given an equal place in a state without discriminatory practices. This idea is loosely based on the one-state solution, however, while the one-state solution refers to the creation of one single state that would "satisfy the national aspirations of both Jews and

¹ BBC. (2024). What is Hamas and why is it fighting with Israel in Gaza?

² AJLabs. (2024). Israel-Gaza war in maps and charts: Live tracker.

³ Albanese, F.P.; Takkenberg, L. (2020). Palestinian Refugees in International Law, p. 1

⁴ Palestinian Central Bureau of Statistics. (2019). Dr. Awad Presents a Brief on Palestinians at the End of 2019.

⁵ Albanese; Takkenberg, *supra* note 3, at 343

⁶ Kalman, M. (2003). The Palestinian Right of Return in International Law - The Israeli Perspective. In *Nexus A Journal of Opinion*, Volume 8, p. 55

⁷ Ibid.

⁸ Shemer-Kunz, Y. (2023). Annexation, normalization and the two-state solution in Israel-Palestine. *Frontiers in Political Science*, Volume 5, p. 12.

Palestinians”⁹ and that would merge Israel, the West Bank, and the Gaza Strip into one common country¹⁰, the right of return as used in this thesis refers to the capability of return for those Palestinian refugees who would wish to do so, regardless of the creation of one state since the creation of such state might not be realistic. Many Palestinian refugees have expressed their wish to return to their home¹¹, however, it could be questioned whether this wish is still present when met with unequal rights unsuitable for a full citizen and accompanied by discriminatory laws, policies, and practices. Mahmoud Abbas, President of the State of Palestine expressed an answer to this exact question stating that: “our Palestinian people and the entire world will not tolerate such a situation and circumstances on the ground will inevitably impose equal and full political rights for all on the land of historical Palestine”¹² However, considering the current State of Israel, which can be argued to be a state of apartheid, the question arises as to whether this will ever be possible under the current legal framework in Israel. Will discriminatory laws and policies in Israel affect the Palestinian refugees’ ability to exercise their right of return?

In this paper, I will look at the discriminatory laws and policies within Israel against the non-Jewish population, more specifically against the Palestinian citizens of Israel, also called Palestinian Israelis or Arab Israelis, who pose a minority, and how these affect the Palestinian refugees’ ability to exercise the right of return. To properly understand the Palestinian refugee crisis and the focus of this research paper, it is first necessary to turn towards the historical background of the Israel-Palestine conflict, which will give us the foundation required for continuing with the aim of this thesis. Furthermore, this thesis will contribute to the gaps currently residing in academic material regarding the discriminating laws and policies in Israel that might or might not hinder Palestinian refugees from exercising their right of return and make everything clear by using a structural layout.

The first substantive chapter of this thesis will look at the right of return under International Law and its legal framework including its legally bindingness onto the states. This part will also delve deeper into the interpretation and application of the right of return as well as the interpretation and application of the right of return by the state of Israel. The second chapter will look at equality and discrimination under its legal framework in international as well as national law. Furthermore, there will be looked at the protection of the rights of minorities in Israel, since it is important to examine the full framework under which Palestinian Israelis could exercise a right to equality and nondiscrimination. Afterwards, this chapter will delve into the current situation regarding equal rights for and discrimination against Palestinian citizens of Israel by looking at the discriminatory laws, policies, and practices in Israel against the non-Jewish population, specifically the Palestinian citizens of Israel. This chapter will also include an examination of the State of apartheid in Israel and an examination of the weakening Rule of Law in Israel. The third, and last, chapter will serve as a synthesis to bind the two previous chapters together. It will briefly summarise the previous chapters and

⁹ Summers, K. (2023). What is the “One-State Solution,” and Why is it Unlikely to Work?

¹⁰ Arab Center Washington DC. (2023). Shifting the Paradigm: The One-State Solution as a Path to Peace.

¹¹ Suleiman, J. (2001). The Palestinian Liberation Organization: From the Right of Return to Bantustan. In Aruri, N. (Ed.), *Palestinian Refugees: The Right of Return*, (p. 87-102)

¹² Shemer-Kunz, *supra* note 7, at 4

critically analyse the findings to come to a conclusion. This chapter will aim to ask the main research question, namely:

How do discriminatory laws and policies in Israel affect the Palestinian refugees' ability to exercise their right of return?

Historical Background

The start of the Israel-Palestine conflict can be attributed to the development of the religious and political movement of Zionism, which, “initially described a movement to invigorate Jewish culture, linguistic, and national identity.”¹³ Its most basic definition is that the Jewish community should have political, cultural, and national autonomy meaning that the Zionists’ main goal was to create an autonomous state in the Holy Land, which had been known under different names over the years, such as Palestine, and currently Israel.¹⁴ This Zionist view led from 1933 onwards to a stream of migration of Jews to the area of Palestine which created a minority of Jewish inhabitants in the area.¹⁵ The gap in knowledge between Jews and Palestinians led, over the years, to a separation between the two groups and started to elicit resentment among the Arab population, marking the beginning of the friction between the Zionists and the Arab population.¹⁶ This friction between the Zionist and the Arab population increased with the creation of the Balfour Declaration in 1917, which declared Palestine to be the “national home for the Jewish people”¹⁷. This declaration did, however, mention, that “the ‘civic and religious rights of existing non-Jewish communities.’”¹⁸ had to be safeguarded, meaning that while the document declared Palestine to be the home of the Jews, the rights of non-Jewish communities, such as the Palestinians, had to be safeguarded. In 1947, the UN announced its Partition Resolution, which officially divided Palestine into an Arab State and a Jewish State¹⁹. This resolution was, however, rejected by the Arab States surrounding Palestine, since the partitioning of a country with an Arab majority into two unequal parts, which can be seen in Figure 1, against the will of the Arab majority, was seen as a “betrayal of the legal and moral obligations towards Palestinian self-determination and independence.”²⁰ Consequently, the Arab States of Egypt (then known as the United Arabic Republic (UAR)), Jordan, Syria, and Iraq also saw the establishment of the Israeli State on May 14, 1948²¹, which followed the UN Partition Resolution, as a threat to the Arab population and prepared forces to enter Israel²² resulting in the first Arab-Israeli war of 1948. While the creation of the state of Israel in May 1948 was the realisation of a long-desired plan to create a Jewish State safe from Jewish prosecution, the establishment has

¹³ Perez, A. (2023). Understanding Zionism: History and Perspectives, p.1

¹⁴ Ibid., [2]

¹⁵ Kochavi, A.J. (1998). The Struggle against Jewish Immigration to Palestine. In Middle Eastern Studies, balfour Volume 34(3), p. 146.

¹⁶ Albanese; Takkenberg, *supra* note 3, at 21

¹⁷ Balfour, A.J. (1917). The Balfour Declaration.

¹⁸ Albanese; Takkenberg, *supra* note 3, at 22

¹⁹ UN General Assembly resolution 181 (II). (1947). Partition Plan.

²⁰ Albanese; Takkenberg, *supra* note 3, at 28-29

²¹ Kaplan, E., Penslar, D.J., Sorkin, D.J. (2011). The Origins of Israel, 1882-1948: a documentary history, p. 342.

²² Albanese; Takkenberg, *supra* note 3, at 31

been given the name ‘The Nakba’, meaning ‘catastrophe’ in Arabic²³, which is used in abundance by the Palestinian people to signify this period in their history. This first war was the result of building tension between the Arab and the Jewish population²⁴ and resulted in the displacement of Palestinian Arabs, which was the largest mass displacement of Palestinians in history²⁵, the number which eventually reached between 600,000 and 750,000 refugees^{26 27}. Only about 15 per cent of the original Arab population from before the first Israeli-Arab war in 1948, which were close to one million people, stayed in the area that was declared as the State of Israel and is the foundation of today’s Arab minority in Israel.²⁸ The other Arabs fled to neighbouring Arab countries, such as Egypt and Lebanon, or even countries beyond²⁹. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was established with the aim of providing assistance and protection for registered Palestine refugees³⁰, meaning those “people whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict.”³¹ Currently, about 5.5 million Palestinian refugees are referred to as ‘registered’ with the UNRWA.³² The UNRWA has continued its work for Palestinian refugees up until this very day, by ensuring health care, education, and emergency assistance among others.³³ The first Arab-Israeli conflict also resulted in the drawing of the Armistice border, also called The Green Line³⁴, which indicated new borders for the area. As shown in Figure 2, the Arab population ended up with a far lesser percentage of the country than was originally planned for under the UN’s Partition Resolution of 1947. The Palestinian Arab territory shrank from the planned 42% of the land to the eventual 22% that the Palestinians were left with after the Armistice agreement in 1949.³⁵

After the first Arab-Israeli war, tensions had continuously been rising leading to the Six-Day War in 1967, a conflict between Israel and Egypt, Syria, Jordan, Iraq, and Lebanon³⁶, which resulted in a territorial expansion by Israel³⁷. This expansion by Israel of, among others, the Gaza Strip, the West Bank, and East Jerusalem, which is shown in Figure 3, has been termed the ‘The Naksa’, meaning ‘the setback’ in Arabic.³⁸ The Six-Day War was followed by another stream of fleeing Palestinians from their homeland, however, smaller than the first mass displacement of 1948³⁹. Apart from the first and the second Israeli-Arab wars, which both led to a massive outflow of Palestinians, multiple other Israeli-Arab wars broke out.

²³ Albanese; Takkenberg, *supra* note 3, at 1

²⁴ Morris, B. (2008). 1948: A History of the first Arab-Israeli War, p. 1

²⁵ Albanese; Takkenberg, *supra* note 3, at 49

²⁶ Flapan, S. (1987). The Palestinian Exodus of 1948. In *Journal of Palestine Studies*, Volume 16(4).

²⁷ Albanese; Takkenberg, *supra* note 3, at 1

²⁸ Albanese; Takkenberg, *supra* note 3, at 35

²⁹ Albanese; Takkenberg, *supra* note 3, at 1

³⁰ United Nations Relief and Works Agency for Palestine Refugees in the Near West. (2013). About UNRWA.

³¹ *Ibid.*, [4]

³² Albanese; Takkenberg, *supra* note 3, at 1

³³ United Nations Relief and Works Agency for Palestine Refugee in the Near West, *supra* note 29, at 2

³⁴ Jerusalem Story. (2024). Green Line (The 1949 Armistice Agreement Line).

³⁵ Institute for Middle East Understanding. (2012). The UN Partition Plan for Palestine.

³⁶ Lotha, G. (2024). Six-Day War.

³⁷ Popp, R. (2006). Stumbling Decidedly into the Six-Day War. In *Middle East Journal*, Volume 60(2).

³⁸ Albanese; Takkenberg, *supra* note 3, at 1

³⁹ Albanese; Takkenberg, *supra* note 3, at 49

The UN has undertaken multiple attempts at solving the refugee crisis since the first mass displacement in 1948, the first of those attempts being UN Resolution 194 (III) which stated that “the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date”.⁴⁰ While Palestinians interpreted this resolution as an “immediate duty upon Israel to allow”⁴¹ their return, Israel “believed that as long as general peace had not been reached with all the Arabs in the area and the Palestinians’ return could jeopardise Israel’s security, the allowance of repatriation was not obligatory.”⁴² Israel indicated that the refugees should preferably be relocated to the Arab territories, namely the Gaza Strip, the West Bank, and the neighbouring Arab countries.⁴³ Apart from stating this preferred solution, Israel had undertaken several steps to prevent Palestinian refugees from returning. One such step is mentioned by Morris, who reports that on June 16, 1948, the Israeli cabinet “without a formal vote, resolved to bar the return of refugees.”⁴⁴ In 1952, Israel even implemented a Nationality Law, which barred the fled Arab population from returning to the State as nationals.⁴⁵ For now, the Palestinian refugee crisis has not gotten closer to being solved, although the recent events surrounding Hamas have shone a new light on the issue.

Methodology

It can be difficult to remain objective with a topic like this due to the many news articles stating gruelling happenings and the continuous stream of new developments, however, knowing this beforehand, I will do my utmost best to look at the research openmindedly and objectively. The main method that this thesis will make use of to come to an answer to the question of how discriminatory laws and policies in Israel affect the Palestinian refugees’ ability to exercise their right of return, is legal dogmatic research.

As mentioned above, the first chapter will take a look at the legal framework of the right of return under international law, making use of international legal documents, such as the Universal Declaration of Human Rights (UDHR), The International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Geneva Conventions. Furthermore, this chapter makes use of case law to delve deeper into the interpretation and application of the right of return to clear up the exact use of the right and any misconceptions that still surround the definition of the right of return under international law. This part will also include the interpretation and application of the right of return by the State of Israel, which are important in examining the situation in practice around the theoretical concept of the right of return. In the end, this chapter will aim to shine a light on whether or not there is a right to return for Palestinian refugees under international law.

⁴⁰ UN General Assembly resolution 194 (III). (1948). Palestine - Progress Report of the United Nations Mediator, Art. 11.

⁴¹ Zilbershats, Y. (2007). International Law and the Palestinian Right of Return to the State of Israel. In Benvenisti, E., Gans, C., Hanafi, S. (Eds.), *Israel and the Palestinian Refugees*, p. 196

⁴² Ibid., [195]

⁴³ Albanese; Takkenberg, *supra* note 3, at 43

⁴⁴ Morris, B. (2001). Righteous victims: A history of the Zionist-Arab conflict 1881-199, p. 257

⁴⁵ Albanese; Takkenberg, *supra* note 3, at 38

The second chapter will make use of legal dogmatic research in the form of the legal framework around equality and discrimination under international law, and secondly, around Israeli laws and policies that can be considered discriminatory towards the non-Jewish population, specifically the Palestinian citizens of Israel. This part will also look at the legal framework of minority rights in Israel since Palestinian Israelis are a minority population within the State of Israel. Furthermore, this chapter will examine the enforcements and practices, to see whether the rights enshrined in Israeli law are in practice also truly protecting the Palestinian Israelis. The third part of this chapter will look at apartheid and the rule of law within Israel, which will be done by making connections with small parts of theory and the current situation in Israel. The exploration of Israel as a state of apartheid and a state with a weakening rule of law will be done through theoretical work on the definition of apartheid and the rule of law, and will include scholarly work and reports on the situation in Israel that might or might not make it apply to the definitions, as well. The aim of this chapter will be to examine the rights of Palestinian Israelis within the Israeli state as well as the current situation in Israel regarding rights for minority groups such as the Palestinian Israelis in order to establish their standing in society.

The third, and last, chapter will be of analyzing nature in which the two previous chapters will be combined to be able to answer the main research question. This chapter will include critical reflection and thinking skills to reach a viable conclusion.

In short, this thesis will make use of legal dogmatic research, in the form of international and national legal frameworks as well as legal analysis from legal scholars, with the aim of not only describing the legal frameworks around the different rights discussed, but also analyzing the current situation, and critical reflection on the effects of these discriminatory laws and policies on the ability of Palestinian refugees to exercise their right of return.

Chapter 1: Right of Return of Palestinian Refugees

The right of return is a principle in international law under which people not only have the right of return to their own country, as implied by the name of this principle but also have the right to leave their own country and move freely within it. The right of return has often been associated with Palestinian refugees in their quest to return to their homeland and is mentioned not only in multiple documents within international law but is also used in some court cases, which have been influential in deciding the interpretation and application of the right of return. The Palestinians argue that if it is accepted that they have a claim to Palestine, then how come their right of return is denied?⁴⁶ They argue that the claim to Palestine by the Palestinians cannot go without a right of return for the Palestinian refugees. This part of the thesis will look at the legal framework of the right of return under international law and the interpretation and application of the right of return.

1.1: Right of Return Under the International Legal Framework

Numerous international instruments have documented the right of return to their body. One of the most prominent ones is the Universal Declaration of Human Rights (UDHR). Article 13 of the UDHR states that “Everyone has the right to freedom of movement and residence within the borders of each State.”⁴⁷ and that “Everyone has the right to leave any country, including his own, and to return to his country.”⁴⁸ This shows that the right of return entails more than its name would suggest. Not only do people have a right to return to their country, but they also have the right to leave a country and move and reside within a State's borders. The UDHR was officially created with the intent to never let the horrors of the Second World War happen again⁴⁹, meaning that the articles within this document are meant to protect states and their citizens against the cruelties of war. This also implies that the document is meant to protect those harmed by the Israel-Palestine conflict. However, the UDHR is not a treaty, meaning that the articles within this document are not legally binding for the countries that approved its making back in 1948, but they can be said to have moral authority. The UDHR contains principles that are legally binding in other human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR). During the drafting of the UDHR, the Chairman of the U.N. Commission on Human Rights, Eleanor Roosevelt explained the declaration as one “of basic principles of human rights and freedoms... and to serve as a common standard of achievement for all peoples of all nations.”⁵⁰ The upholding of the articles declared in the UDHR is thus a matter of respecting human rights and the right morals that come with certain situations in which human rights are negatively affected. While the UDHR is not legally binding in international law and does thus not safeguard the right of return as a legally binding right, the document has been very important for the development

⁴⁶ Khalidi, R.I. (1992). Observations on the Right of Return. In *Journal of Palestine Studies*, Volume 21(2)

⁴⁷ Universal Declaration of Human Rights. (1948). Art. 13(1)

⁴⁸ *Id.*, Art. 13(2)

⁴⁹ United Nations. (2024). Universal Declaration of Human Rights: History of the Declaration.

⁵⁰ Hannum, H. (1996). The Status of the Universal Declaration of Human Rights in National and International Law. In *Georgia Journal of International & Comparative Law*, Volume 25(1), p. 318

of international human rights law after 1948 due to the fact that the declaration is based on human rights standards that should be upheld based on the morals of a state.

A second international instrument to also have documented the right of return is The International Covenant on Civil and Political Rights (ICCPR). Article 11 of this document mentions that:

- 1) “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
- 2) Everyone shall be free to leave any country, including his own.
- 3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
- 4) No one shall be arbitrarily deprived of the right to enter his own country.”⁵¹

The ICCPR elaborates further on the rights, in particular civil and political rights, mentioned within the UDHR, which the extended definition of the right of return above shows. Unlike the UDHR, the ICCPR is a treaty, meaning that the covenant is legally binding under international law. However, it is only legally binding for the countries that have ratified the Covenant. The UN Human Rights Committee (HRC) is a body established by the ICCPR to review whether the ratified countries have behaved in conformity with the obligations set down in the treaty. According to the UN, all states ratified to the ICCPR “are obliged to submit regular reports to the Human Rights Committee on how civil and political rights are being implemented.”⁵² after which the Committee will make known its concerns. While Israel has ratified the ICCPR⁵³, Israel did not ratify the Optional Protocol of the ICCPR⁵⁴, which states that the Committee is free to receive communications from individuals of ratified states, which means that the HRC does not have jurisdiction to hear a complaint from an Israeli citizen, neither Jewish Israeli nor Palestinian Israeli, about situations in which the Israeli State has violated their human rights.

Apart from the UDHR and the ICCPR, another international document that has enshrined the right of return in its body is the Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Article 5(d)(ii) of the ICERD declares that everyone has “the right to leave any country, including one’s own, and to return to one’s country”⁵⁵ Just as the ICCPR the ICERD is a treaty and thus legally binding to the states that have ratified the convention. Israel has ratified this treaty, however, the state has made a reservation for Article 22 of the Convention⁵⁶, which states that:

⁵¹ United Nations General Assembly resolution 2200A (XXI). (1966). International Covenant on Civil and Political Rights, Art. 12

⁵² United Nations. (2024). Introduction to the Committee: Human Rights Committee.

⁵³ United Nations. (2024). Status of Ratification: Interactive Dashbord.

⁵⁴ United Nations. (2024). Optional Protocol to the International Covenant on Civil and Political Rights.

⁵⁵ United Nations General Assembly resolution 2106 (XX). (1965). International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5(d)(ii).

⁵⁶ United Nations General Assembly resolution 2106 (XX). (1965). International Convention on the Elimination of All Forms of Racial Discrimination - Declarations and Reservations, p. 6.

“Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.”⁵⁷

This means that if there is a conflict between two or more states that have ratified the convention about the interpretation or application of one or more of the articles described in its body, the International Court of Justice (ICJ) can be involved in certain situations. A reservation of this article by the State of Israel has consequences for the enactment of the right of return because the ICJ cannot get involved in a situation where Israel has a conflict with one or more other State parties about the interpretation and application of the right of return. This might also make it more difficult for other countries to come to an agreement with Israel about its interpretation and application since it is not allowed to present the disagreement about the interpretation or the application of the right of return to the ICJ, but will instead have to be solved by turning to other methods. Just like the ICCPR, the ICERD has a committee, the Committee on the Elimination of Racial Discrimination (CERD), that looks at the implementation of the treaty by States. This is done by looking at regularly submitted reports about the implemented rights.⁵⁸

Lastly, the Fourth Geneva Convention has also documented the right of return in its body of work. The Geneva Conventions consist of four treaties that lie at the heart of International humanitarian law (IHL)⁵⁹, which is a “set of rules that seek to limit the effects of armed conflict”.⁶⁰ The Fourth Geneva Convention, in particular, has the aim of protecting the citizens of states in war, including those who are living in occupied territories.⁶¹ This would include those Palestinians living in the Occupied Palestinian Territory (OPT) as well as the Palestinian citizens of Israel. The right of return is described in Article 49 which states that “Persons thus evacuated shall be transferred back to their homes as soon as the hostilities in the area in question have ceased.”⁶² The Geneva Conventions are just like the ICCPR and the ICERD treaties and are legally binding on the countries ratified to the conventions. The Geneva Conventions are universally ratified, however, the existing Additional Protocols are not universally ratified⁶³, but this does not appear to influence the legally bindingness of the right of return for the State of Israel in specific.

1.1.2 Interpretation and Application

While the right of return is thus mentioned within international law in different legal instruments, there are still some issues regarding its interpretation and application. Various interpretations of the definition of the right of return in international law lead to confusion in

⁵⁷ United Nations General Assembly resolution 2106 (XX). (1965). International Convention on the Elimination of All Forms of Racial Discrimination, Art. 22.

⁵⁸ United Nations. (2024). Committee on the Elimination of Racial Discrimination: Introduction.

⁵⁹ International Committee of the Red Cross. (2014). The Geneva Conventions of 1949 and their Additional Protocols.

⁶⁰ European Commission. (2023). International Humanitarian Law.

⁶¹ International Committee of the Red Cross, *supra* note 58

⁶² IV Geneva Convention. (1949). Art. 49

⁶³ Blokhina, K. (2019). Geneva Conventions and their additional protocols.

its application as well as an opportunity for States to not adhere to the right of return due to the use of a different interpretation than the one that was meant to be the correct interpretation upon the drafting of the right. The next section will discuss three issues that have come up around the interpretation and application of the right of return.

Issue of ‘one’s own country’

One of these issues on interpreting the right of return is what it means to return to ‘his own country’. This issue pertains to the fact that it is unclear what is meant with the wording ‘his own country’ within, for instance, the ICCPR definition of the right of return. In turn, this leads to difficulty interpreting the article and determining the criteria a country has to fulfil regarding ties to the person seeking to return, for it to be a country that the person can call ‘his own’. Legal institutions have given multiple possible solutions, one of these being a comment from the HRC regarding the definition of the right of return under Art. 12 of the ICCPR. They state that:

“The scope of “his own country” is broader than the concept “country of his nationality”. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered a mere alien.”⁶⁴

Under this interpretation, it would mean that not only Palestinian refugees born in the country that is now Israel would fall under the application, but also descendants of the Palestinian refugees that have special ties or claims to Israel. When people have special ties to a State, which can take shape in the form of a language or family still living in the area, they cannot be merely seen as an ‘alien’ of the State. Children of refugees would thus have a right of return under this interpretation, even if they never even left the State of Israel, but were, for instance, born in another State. This interpretation of ‘his own’ country is broader than others, which results in the fact that more people besides the 1948 refugees, would have a claim to the right of return under this interpretation. A second instance in which this interpretation of the right of return is followed is *Warsame v. Canada*. In this court case, the HRC decided that the author, Jama Warsame, could call Canada ‘his own country’ due to “the strong ties connecting him to Canada, the presence of his family in Canada, the language he speaks, the duration of his stay in the country and the lack of any other ties (...) with Somalia.”⁶⁵ This interpretation is relatively similar to the comment of the HRC mentioned first, seen as both interpretations emphasize the ties someone has to a country that determine whether you can call a certain country your own. Over the years, the HRC has, however, given inconsistent interpretations of the wording ‘his own country’.⁶⁶ Besides the comment of the HRC and the *Warsame v. Canada* case’s consistent interpretation, a second interpretation, namely the one mentioned in the *Stewart v. Canada* case slightly differs.

⁶⁴ Human Rights Committee. (1999). General Comment No. 27 (CCPR/21/Rev.1/Add.9), paragraph 4(20)

⁶⁵ *Warsame v. Canada*, CCPR/C/102/D/1959/2010. (2011). p.17

⁶⁶ Martha, R.; Bailey, S. (2020). The right to enter his or her own country.

In the *Stewart v. Canada* case, the author, Charles E. Stewart, argued that Canada was ‘his own country’ because he had been living there since he was seven years of age⁶⁷. The HRC argued that this was not the case and that Canada could not be considered ‘his own country’ since the definition of the right of return under Art. 12(4) of the ICCPR suggests that when you are not a national of a country, you can only call that country ‘your own country’ when you are not considered an ‘alien’. According to the first interpretation set out above, being considered an ‘alien’ depends on whether you have ties to that state or not. In this interpretation, however, the HRC stated that since Mr. Stewart had not applied for Canadian citizenship in all those years of living there, but instead still held his British citizenship, he could be considered an ‘alien’ and thus not call Canada ‘his own country’. His ties to the country had little meaning in his claim to Canada as ‘his own’ country. Examples of ‘non-alien’ persons are given in the statement, mentioning that:

“This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law and of individuals whose country of nationality has been incorporated into or transferred to another national entity whose nationality is being denied them.”⁶⁸

This interpretation differs from the comment of the HRC and the *Warsame v. Canada* case in the sense that while the first interpretations emphasize the fact that for a country to be called someone’s own there needs to be a strong tie to the country in the form of family, language, etc., the interpretation in the case of *Stewart v. Canada* emphasizes that a country can only be called ‘your own’ when you are a non-alien of that country. While Stewart could not be considered a non-alien of Canada in this particular case, it can be argued that the Palestinians living outside of Israel and even those living in the OPT who do not hold Israeli citizenship can be considered ‘non-alien’ of Israel since they would fall under those “individuals whose country of nationality has been incorporated into or transferred to another national entity whose nationality is being denied them.”⁶⁹, and thus have the right to return to Israel. However, this seems to only apply to those refugees who fled to the country before the establishment of the State of Israel. Refugees who fled, for instance, in 1967 or the children of refugees born in other states did not possess the nationality of the country that was incorporated into or transferred to the State of Israel and can thus, according to the definition of non-alien, not be seen as a non-alien of Israel.

Besides these two, somewhat inconsistent, interpretations of the HRC, there is a third important interpretation that needs to be mentioned in connection with the definition of ‘his own country’ in Article 12 of the ICCPR. This is the *Nottebohm* case which was decided before the ICJ in 1955⁷⁰. In this case, Mr Nottebohm, a German citizen who had lived in Guatemala for 34 years, gave up his German citizenship to become a citizen of Liechtenstein. When returning to Guatemala, after having been gone for a while, Mr Nottebohm’s citizenship of Liechtenstein was denied for which Liechtenstein brought Guatemala before the ICJ. While Liechtenstein claimed that Guatemala was wrongful in refusing to recognize

⁶⁷ *Stewart v. Canada*, CCPR/C/58/D/538/1993. (1996)

⁶⁸ *Id.*, at 16

⁶⁹ *Id.*

⁷⁰ *Nottebohm Case (Liechtenstein v. Guatemala)*, Second Phase, Judgement, ICJ. (1955)

their grant of citizenship to Mr. Nottebohm, Guatemala argued that they didn't have to recognize Liechtenstein's grant of citizenship under international law.⁷¹ The main takeaway from this case, which is also important when looking at the claim Palestinian refugees could lay on Israel as 'their own country' when appealing to their right of return, is that the ICJ ruled the following:

"They have given their preference to the real and effective nationality, that which accorded with the facts, that based on stronger factual ties between the person concerned and one of the States whose nationality is involved. Different factors are taken into consideration, and their importance will vary from one case to the next: the habitual residence of the individual concerned is an important factor, but there are other factors such as the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc."⁷²

For the case of the Palestinian refugees specifically, this would mean their right of return depends from case to case. Those who have stronger ties to Israel in the form of family ties, attachment to Israel, etc. have a greater right of return than those whose ties to Israel have considerably diminished over the generations since their exodus. The ties of the children of Palestinian refugees are considerably weaker than those of the refugees from 1948 and 1967. However, this does not necessarily mean that these children would not have a right to return to Israel. It just means that for these people to have a claim to the right of return to Israel there need to be other links present, such as a family who still lives in the State.

The interpretation given in the Nottebohm case seems to be giving the best definition of 'one's own country' that is given in court cases and other legal documents. While the interpretation from the HRC and the Warsame v. Canada case seems to be giving a definition too broad, the Stewart v. Canada case gives a definition that is too narrow. The Nottebohm case, on the other hand, gives an interpretation that takes into account the challenging nature of the situation. Due to the different refugee dispersals and the fact that the refugees have since their exodus acquired descendants, it might be better to look at the ties a person has to Israel on a case-to-case basis. Of course, it is nearly impossible to look at every individual Palestinian wishing to invoke their right of return to see if they have a right to claim Israel as 'their own country', however, categorising the different refugees, such as the 1948 refugees, the 1967 refugees, and descendants of these refugees, as well as whether these categories of refugees have for instance ties in the form of the family still living in the area, might make this case-to-case basis less demanding. Their right to call Israel their 'own state' would then depend on which category they belong to and which ties they still have to the State.

Apart from different interpretations mentioned in court cases and other documents, legal scholars also differ in opinion on the right interpretation. While Ingles and Sieghart believe that "the right to enter the state is assigned solely to citizens of that state"⁷³ and thus not to everyone with a connection to the country, Nowak argues for a broader interpretation that not only includes permanent residents of the state but also those who subjectively feel attached to

⁷¹ *Id.*

⁷² *Id.*

⁷³ Zilbershats, *supra* note 40, at 201

the state and thus argue that that state is their own⁷⁴. A third interpretation is that of Hannum who explains that the term ‘his own country’ should be interpreted more broadly than just including nationals, but not as broadly as including people who see themselves as belonging to a state subjectively.⁷⁵ Since it has a broader approach but does not include people who subjectively see themselves as belonging to a state, this interpretation seems to be the best one. When allowing a state to be called ‘one’s own’ purely on a subjective basis, it could in theory be possible to admit everyone to that state regardless of their objective ties to the State.

Issue of the ‘arbitrariness’ of the depriving of the right of return

Not only have there been interpretational issues with the meaning of ‘his own country’, in the definition of the right of return, and who, as a result, can lay claim on the right of return, but a question surrounding the nature of the concept of arbitrariness⁷⁶ as mentioned in article 12(4) of the ICCPR also arises. Article 12(4) of the ICCPR mentions that: “No one shall be arbitrarily deprived of the right to enter his own country.”⁷⁷ The clearing up of the nature of arbitrarily is important seeing as it decides the scope of the right. When not knowing the exact meaning of the word ‘arbitrarily’ as used in the ICCPR article, it becomes immensely difficult to determine the situations in which it is acceptable to deprive someone of their right of return and in which situations it is not. The word ‘arbitrarily’ is namely the only qualification on the right of return listed in Article 12(4) of the ICCPR⁷⁸. The addition of the word ‘arbitrarily’ in the description of the right of return has posed a problem in the context of the Israel/Gaza conflict in the sense that the question of whether the Palestinian refugees are ‘arbitrarily’ deprived of their right of return by Israel, arises. According to Quigley, the term ‘arbitrarily’ was inserted in the definition of the right of return under Article 12(4) of the ICCPR due to countries who expressed their wish to only provide entry to those who had not been exiled.⁷⁹ By adding ‘arbitrarily’ to the definition, the declining of the right of return of those who had been deprived of the right under certain circumstances became possible.

One interpretation of the definition of ‘arbitrarily’ is given by the drafters of the ICCPR who submitted that the term ‘arbitrarily’ could be said to be equivalent to ‘unlawful’.⁸⁰ According to Hannum, however, this narrow definition is not appropriate since this interpretation has been formed by mostly considering the term ‘arbitrarily’ in the context of arbitrary arrest or detention.⁸¹

An interpretation that does look at the term ‘arbitrarily’ in the case of the right of return is the interpretation set out in General Comment 27 of the HRC, which states that:

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Albanese; Takkenberg, *supra* note 3, at 365

⁷⁷ United Nations General Assembly resolution 2200A (XXI). (1966). International Covenant on Civil and Political Rights, Art. 12(4)

⁷⁸ Agterhuis, S. (2004). The Right to Return and its Practical Application, p. 6

⁷⁹ Quigley, J. (1998). Displaced Palestinians and a Right of Return. In *Harvard International Law Journal*, Volume 39(1), p. 202.

⁸⁰ Agterhuis, *supra* note 77

⁸¹ Hannum, H. (1987). The Right to Leave and Return in International Law and Practice. In *International Studies in Human Rights*, Volume 8, p. 44

“The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative, and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims, and objectives of the [ICCPR] and should be, in any event, reasonable in the particular circumstances. The Committee considered that there are few, if any, circumstances in which deprivation of the right to enter one’s own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.”⁸²

In short, the meaning of ‘arbitrarily’ points towards the fact that even if a denial of the right of return is provided for in the law, it has to be in accordance with the articles of the ICCPR. The HRC continues to mention that in their eyes there are almost no cases in which this is possible, meaning that it is not allowed to prevent persons from returning to their own country in any circumstance.

Because most interpretations of the term ‘arbitrarily’ are studied surrounding arrest or detention, and not around the right of return, the exact meaning of the use of ‘arbitrarily’ in the definition of the right of return according to Article 12(4) of the ICCPR is still not clear.⁸³ Because of the lack of clearness surrounding the definition of the term, countries still have a broad scope in interpreting and applying the right of return regarding the term ‘arbitrarily’. Hannum adds an insightful statement to this uncertainty, mentioning that “At a minimum, no denial of the right of return can be discriminatory in violation of Article 2(1) of the Covenant.”⁸⁴, meaning that the right of return can never be denied based on distinctions such as race, colour, sex, language, religion and political opinion. A different view is added to this by Zilbershats, who explains that “Once the scope of the right is enlarged and it is applied to masses of refugees and displaced persons, one may rethink what the proper limitations of that right should be.”⁸⁵ She explains that by allowing the return of all Palestinian refugees, the right to self-determination of the Jewish Israelis is undermined, which leads to the conclusion that the return “may not be arbitrary.”⁸⁶

Issue of the emergency clause of the ICCPR

Regarding the application of the right of return, there is a third issue that arises, namely the applicability of the emergency clause of the ICCPR. According to Article 4 of the Covenant:

“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”⁸⁷

⁸² Human Rights Committee, *supra* note 63

⁸³ Agterhuis, *supra* note 77

⁸⁴ Hannum, *supra* note 80, at 45

⁸⁵ Zilbershats, *supra* note 40, at 204

⁸⁶ Ibid.

⁸⁷ United Nations General Assembly resolution 2200A (XXI). (1966). International Covenant on Civil and Political Rights, Art. 4(1).

Since Israel has been in an official state of emergency since its establishment in 1948⁸⁸, the question arises whether the state needs to adhere to the article of the right of return. The emergency clause of the ICCPR thus poses a problem since it questions Israel's responsibility to uphold certain articles within the Covenant.

According to Zilbershats, the fact that the State of Israel has officially proclaimed a state of emergency means that, under human rights law, Israel is under no "obligation to enable the return of people who might threaten its security."⁸⁹ It is even argued that this points to the fact that the right of return is not an absolute right since it can be derogated and is limited by the emergency clause of the ICCPR. However, when critically reading the emergency clause, which is stated above, it becomes clear that derogating from the obligations presented in the Covenant is not allowed when they are inconsistent with other obligations under international law and when they involve discrimination. One could wonder whether the denial of the right of return by Israel is the result of discrimination solely on the grounds of religion or social origin or if this is not the case. When the inapplicability of the right of return by Israel is found to be the result of discrimination on the grounds of religion and/or social origin, the emergency clause would not be a good enough reason for Israel to deny the Palestinian refugees their right of return. This is, of course, a contested question since opinions are divided on this, but it is an important question to ask, altogether, when looking at the acceptability of the emergency clause in not adhering to the right of return. This also shows that the right of return is an absolute right when it concerns situations of discrimination, in which case it is not allowed to derogate from the right.

1.2 Conclusion

The principle of the right of return for Palestinian refugees is the idea that Palestinian refugees have a right to return to the land they were exiled from during the 1948 and 1967 Israeli-Arab wars. According to the Palestinians around the world, the right of return to the land that is now known as Israel is a means to "adequately redress the injustice of the expulsion and dispossession."⁹⁰ that they have had to endure since 1948. Descendants of these exiled Palestinians have since then clung to the idea of someday being able to return to their own home, however, this is easier said than done. Israel does not acknowledge the right of return as an international right and denies Palestinian refugees this right.⁹¹ The State argues that allowing the return of (some of) the Palestinian refugees would not only threaten Israel's national security but also threaten the Jewish character of the Israeli State.⁹² According to Zilbershats, Israel not only sees no obligation to allow Palestinian refugees to return because it would "enable the return of people who might threaten its security."⁹³, but the state also

⁸⁸ Navot, S. (2017). Emergency As a State of Mind - The Case of Israel. In Auriel, P., Beaud, O., Wellman, C. (Eds.), *The Rule of Crisis Terrorism, Emergency Legislation and the Rule of Law*, (p. 185-212)

⁸⁹ Zilbershats, *supra* note 40, at 203

⁹⁰ Albanese; Takkenberg, *supra* note 3, at 343

⁹¹ Office of the United Nations High Commissioner for Human Rights. (2023). Right of return of Palestinian refugees must be prioritised over political considerations: UN experts.

⁹² Albanese; Takkenberg, *supra* note, at 343

⁹³ Zilbershats, *supra* note, at 203

believes that the return of “people who consider themselves Palestinian refugees may hamper the right of the Israeli people to self-determination.”⁹⁴ Numerous international legal bodies have, however, enshrined the right of return. The definitions of the right of return are not always clear and a lot of different interpretations exist which allows for a scope of different applications beyond the interpretation that was meant to be the correct one upon drafting the right. Questions about the meaning of ‘his own country’ and ‘arbitrarily’ have arisen as well as the applicability of the emergency clause as a proper reason for not adhering to the right of return of Palestinians. While the meaning of ‘his own country’ and the validity of the emergency clause have been cleared up over the years by the HRC and case law, the meaning of ‘arbitrarily’ is still not clear. Looking at the most logical and sound interpretations of the different issues, it seems however, as if there is indeed a right of return for Palestinian refugees under international law regardless of the interpretations and application of Israel.

⁹⁴ Ibid., [204]

Chapter 2: Equal Rights of Palestinian Israelis

When looking at the question of how discriminatory laws and policies in Israel affect the ability of Palestinian refugees to exercise their right of return, it is important to look at equality and discrimination within the international legal framework as well as the national legal framework of the State of Israel. Equality pertains to different areas such as equal access to education, work, and healthcare, equality before the courts and equal political rights. When someone or a group of people does not have equal access to one or more of these rights because of their race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status, it can be seen as discriminatory. Different conventions and treaties are set up to fight inequality and discrimination internationally, some of which focus on a different group of people. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), for instance, looks in particular at protecting women against inequality and discrimination⁹⁵, while the Convention on the Rights of Persons with Disabilities (CRPD) looks at protecting disabled children and adults against inequality and discrimination⁹⁶. While these different legal instruments must exist to combat discriminatory practices within states, most of them do not specifically protect the Palestinian Israelis as a minority group in Israel⁹⁷. This chapter will look at the international legal framework of equality and discrimination as well as minority rights and the national legal framework of equality and discrimination, with a particular focus on those instruments only that protect Palestinian Israeli citizens. Furthermore, the current situation of equal rights for Israeli Palestinians will also be examined by looking closer at the practices of equality and anti-discrimination laws and policies within Israel. While there might be an Israeli legal framework protecting the equality of minorities, such as the Arab minority, this does not necessarily mean that these laws and policies protecting the rights of minorities are also properly enforced or that there are no other laws in Israel that have a discriminatory and segregating effect. Lastly, the state of apartheid and the weakening rule of law in Israel play an important role in the Israeli legal framework of equality and non-discrimination of Palestinian Israelis, and how this is enforced in practice. This will thus also be looked at within this chapter.

2.1 Equality and Discrimination Under the Legal Framework

2.1.1 International Legal Instruments

After the Second World War, there came an increased importance and emphasis on the documentation of human rights, which would eventually lead to better enforcement of the rights that humans can enjoy. Numerous international instruments currently protect the equality and non-discrimination rights of people as well as the rights of minority populations

⁹⁵ United Nations General Assembly resolution 34/180. (1981). Convention on the Elimination of All Forms of Discrimination against Women.

⁹⁶ United Nations General Assembly resolution 61/106. (2006). Convention on the Rights of Persons with Disabilities.

⁹⁷ Minority Rights Group. (2020). Israel.

in states. The following part will examine the international legal framework of equality and non-discrimination and the international legal framework of minority rights. Furthermore, this part will look at how these international instruments affect the State of Israel.

Equality and nondiscrimination in international legal instruments

The increased importance and emphasis on the development and the establishment of human rights law after the Second World War has led to the creation of the International Bill of Human Rights, which exists out of the UDHR and two covenants, namely the ICCPR and the International Covenant of Economic, Social, and Cultural Rights (ICESCR)⁹⁸. These three documents form the basis of the international legal framework around human rights.

The UDHR, which also mentions the right of return as a vital human right, lays down an array of other different rights. The preamble of the declaration emphasizes the importance of equality of all humans, which is repeated in the very first article as well:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood.”⁹⁹

Apart from Article 1, which emphasizes equality, article 2 of the declaration stresses the importance of non-discrimination. It does this by highlighting that everyone is entitled to their rights without distinction of any sort¹⁰⁰. Article 7, moreover, states the equality of people before the law and the right for everyone to be protected non-discriminatorily.¹⁰¹ While the UDHR is not legally binding, the articles in the UDHR are not completely invalid when looking at the international legal framework of equality and discrimination, since the articles within this declaration are the foundation for the conventions that have been set up after the establishment of the UDHR and give countries a guideline on how to morally ensure everyone's rights.

The ICCPR is a legally binding international legal instrument which has enshrined equality and non-discrimination alongside other human rights and stresses the importance of equality without considering someone's race, colour, sex, language, religion, and social origin¹⁰², just like the UDHR has done. This covenant, as its name suggests, has enshrined articles mostly relating to civil and political rights, meaning that they, for instance, pertain to someone's right to equal social opportunities and protection under the law as well as the right to equally participate in the States' political environment without being left out or fear of discrimination. While it is important that the right to equality and non-discrimination have been laid down in a legally binding covenant, it is important to keep in mind that the scope and interpretations of the terms 'equality' and 'non-discrimination' are not stated within the ICCPR. Ramcharan notes that “for the framers of the Covenant, perhaps, the meaning of equality and nondiscrimination went without saying, deriving from its prime place as a fundamental

⁹⁸ Office of the United Nations High Commissioner of Human Rights. (2024). International Bill of Human Rights: A brief history, and the two International Covenants.

⁹⁹ Universal Declaration of Human Rights. (1948). Art. 1

¹⁰⁰ *Id.*, Art. 2

¹⁰¹ *Id.*, Art. 7

¹⁰² United Nations General Assembly resolution 2200A (XXI). (1966). International Covenant on Civil and Political Rights, Art. 2(1).

human right and incorporating the guidance provided by the massive literature on equality and non-discrimination in moral, legal, and political philosophy”.¹⁰³ While this may have been the case, the application of the articles regarding equality and nondiscrimination may become much more complicated when considering the many interpretations of the terms.

The second covenant that is part of the International Bill of Human Rights is the ICESCR. Within this covenant, the right to non-discrimination is structured within the context of its economic, social, and cultural rights. This means that while under this covenant everyone has, for instance, equal access to work¹⁰⁴, education¹⁰⁵, and cultural life¹⁰⁶, there is no sole right of equality and non-discrimination enshrined in this covenant. The only mention of the right to equality and nondiscrimination is in conjunction with other economic, social, and cultural rights.

International legal framework on minority rights

Apart from the international legal framework on equality and non-discrimination, it is also important to look at the international legal framework on minority rights regarding the Palestinian Israelis. The ICCPR is the first document to have articulated minority rights protections¹⁰⁷. In Article 27, the document states that:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”¹⁰⁸

This means that states must “create special protective measures”¹⁰⁹ to be able to provide individuals belonging to minority groups with the rights they have a claim to. This idea is supported by a comment of the HRC on this particular article, saying that the article points towards an obligation to “actively protect minorities from violations of their rights, both by the state and private actors.”¹¹⁰ However, important to consider is that Article 27 “is limited to ‘ethnic, religious, or linguistic minorities’”¹¹¹ Since Palestinian refugees can be seen as both an ethnic and religious minority, they fall under the minorities protected under Article 27.

Besides Article 27 of the ICCPR, a second important document in the protection of the rights of minorities is the UN Declaration on Minorities¹¹². While Article 27 of the ICCPR

¹⁰³ Ramcharan, B.G. (1981). Equality and Nondiscrimination. In Henkin, L. (Ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights*, p. 247

¹⁰⁴ United Nations General Assembly resolution 2200A (XXI). (1966). International Covenant on Economic, Social, and Cultural Rights, Art. 6

¹⁰⁵ *Id.*, Art. 13.

¹⁰⁶ *Id.*, Art. 15(1(a))

¹⁰⁷ Jabareen, Y.T. (2012). Toward Participatory Equality: Protecting Minority Rights Under International Law. In *Israel Law Review*, Volume 41(3), p. 646

¹⁰⁸ United Nations General Assembly resolution 2200A (XXI). (1966). International Covenant on Civil and Political Rights, Art. 27

¹⁰⁹ Jabareen, *supra* note 106, at 647

¹¹⁰ Human Rights Committee. (1994). General Comment No. 23 (CCPR/C/21/Rev.1/Add.5), paragraph 6.1

¹¹¹ Sohn, L.B. (1981). The Rights of Minorities. In *The International Bill of Rights: The Covenant on Civil and Political Rights*, p. 280

¹¹² United Nations General Assembly resolution 47/135. (1992). Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

only addresses individuals belonging to minority groups, the declaration addresses individuals as well as collective minority rights. The declaration is not binding, however, the purpose of the declaration is more to “inspire nations to actively strive to preserve minority cultures and equal rights.”¹¹³ than to legally bind countries to its content.

Application to the State of Israel

Having looked at the international legal framework on equality and nondiscrimination as well as minority rights, it is important to look at how these international instruments apply to the State of Israel and whether or not the content of the instruments binds Israel.

Article 7 of the UDHR shows that not only should Israel’s laws apply equally to Jewish Israeli and Arab Israeli populations, but both groups should be equally protected by the law as well, for instance in courts. Israel is however not bound by the content of the UDHR, but it is bound by the ICCPR. This means that the articles enshrined in the ICCPR have to be adhered to by Israel and that the nationals of Israel, both the Jewish Israeli and the Palestinian Israeli have a claim to these rights. Even though Israel has called out a state of emergency since 1948¹¹⁴ and thus has the possibility under Art. 4 of the Covenant to “take measures derogating from their obligations under the present Covenant”¹¹⁵, this article does also specifically mention that these derogating measures cannot involve discrimination in any way.¹¹⁶ This shows that the article safeguarding equality and nondiscrimination within the ICCPR can never be ignored, no matter the circumstances. Furthermore, Israel has ratified the ICESCR as well, meaning that the state is thus obliged to adhere to its articles, giving Israeli nationals a claim to the rights enshrined in this covenant. The ICESCR, however, is not as important for obliging states to adhere to its citizens' right to equality and nondiscrimination as the ICCPR is, since it only mentions these two rights in conjunction with other rights.

Whether Israel is also legally bound by the documents laying down the international minority rights is debatable. The UN and international human rights groups have considered Palestinian Israelis to be a “national, cultural, linguistic, and religious minority”¹¹⁷, however, the State of Israel and its laws do “not identify Palestinians as a national minority.”¹¹⁸ Even though Israel has ratified the ICCPR and thus should uphold the articles within, the state might argue that Article 27 of the ICCPR does not apply to the Palestinian Israeli population since they are not a minority under Israeli law.

2.1.2. National Legal Instruments

Nationally, the rights of citizens are laid down in a country’s constitution. Additionally, there might be separate legislation on the rights citizens have a claim to. A constitution is a set of fundamental rules that not only lays down the rights that must be ensured for its citizens but it is also vital in “cementing human rights protections and ensuring legal accountability

¹¹³ Jabareen, *supra* note 106, at 648

¹¹⁴ Navot, *supra* note 87, at 1

¹¹⁵ United Nations General Assembly resolution 2200A (XXI). (1966). International Covenant on Civil and Political Rights, Art. 4(1)

¹¹⁶ *Id.*

¹¹⁷ European Parliament Policy Department. (2012). Policy Briefing - Shackled at home: The Palestinian minority in Israel, p.7-8

¹¹⁸ *Ibid.*, [8]

for the realization”¹¹⁹, meaning that because human rights are laid down in a constitution, this gives them more weight in the sense that these rights can be better protected against misuse. It ensures that the government is accountable for protecting the rights of the citizens of the state they serve. These rights can range from freedom of religion and speech to equality and are based on the rights in the UDHR. While Israel does not have a constitution in the formal sense, they do have legislation that comes close to it, namely the Basic Laws of Israel, which are fourteen separate laws that can be seen as ‘chapters’ of a constitution as we know it from other countries. Every Basic Law concerns another part of Israel’s legislation, such as the army¹²⁰ and the judiciary¹²¹. The human rights that Israel has laid down for its citizens are in the Basic Law: Human Dignity and Liberty and the Basic Law: Freedom of Occupation¹²². Within these specific laws, rights such as the right to privacy and the right to engage in any occupation, profession or trade are mentioned. However, the words ‘equal’, ‘equality’, or ‘non-discrimination’ are not explicitly mentioned in these laws. How equality is approached in the two Basic Laws on human rights is the same way as it is approached in the ICESR, namely in conjunction with other laws.

Besides the rights of citizens being laid down in the Basic Laws of Israel, there is also regular legislation that could lay down the rights to equality and non-discrimination. Looking at Israel’s body of legislative work, it is noticeable that there are eleven such ‘regular’ laws each concerning a different area. Only one of these laws concerns equality, namely the Equality Rights for the Disabled Law.¹²³ While this law is important to protect the human rights of a certain group in Israel, it does not prevent inequality and discrimination against minority groups, such as the Palestinian Israelis. Besides the law that protects the disabled from discrimination, the Israeli legal framework does not include any equality or non-discrimination law nor a law that protects the minority populations within the State of Israel.

While there are no Basic Laws or regular legislation in Israel that explicitly protect the right to equality and nondiscrimination for Palestinian Israelis, one important document does state this right to equality and nondiscrimination. The Declaration of the Establishment of the State of Israel mentions that Israel will:

“ensure complete equality of social and political rights to all its inhabitants irrespective of religion race, or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations”¹²⁴

The main takeaway from this passage of the Declaration of the Establishment of the State of Israel is that it pledges to treat all its citizens equally not only socially and politically but also religiously. The Declaration is not important only for the equal rights and nondiscrimination

¹¹⁹ Murray, C.; Gluck, J. (2023). Protecting Human Rights in Constitutions. United Nations Development Programme, p. 1.

¹²⁰ Basic Laws of Israel: The Army. (1976)

¹²¹ Basic Laws of Israel: The Judiciary. (1984)

¹²² Halperin-Kaddari, R.; Yadgar, Y. (2010). Religion, Politics and Gender Equality among Jews in Isreal. United Nations Research Institute for Social Development and Heinrich Boll Foundation 2010, p. 29.

¹²³ Equality Rights for the Disabled Law. (1998).

¹²⁴ The Declaration of the Establishment of the State of Israel. (1948)

of Israeli citizens, but it is important for Israel as well, seen as the document “is regarded as an expression of the nation’s vision and its central beliefs”¹²⁵ There has been a debate going on about whether the declaration itself is legally binding. Multiple judges from the Supreme Court of Israel, as well as legal scholars, have given an opinion on the legal bindingness of the declaration ranging from the idea that it is legally binding because it expresses the vision of the people of Israel and should therefore be seen as the laws of the state to the idea that the declaration is not legally binding but more of an interpretive tool that can be used as a guideline.¹²⁶ Seen as the document is a declaration, which content has not been transcribed into the State’s Basic Laws, it seems like the declaration is indeed not legally binding, but meant as a guideline of the State’s visions and beliefs.

Examination of the national framework on the right to equality and nondiscrimination has pointed towards a gap between the international and national legal frameworks. While internationally, human rights, and more specifically equality and nondiscrimination are rigorously laid down, nationally, this is not the case. Equality in conjunction with other rights has been laid down for the citizens of the State of Israel, however, the pure right to equality and nondiscrimination is not mentioned in any law. Israel’s Declaration of Independence does mention these rights specifically, however, because of its questioned legally bindingness, it can not be said that the contents of the document are applicable. The next part will discuss the current situation of equal rights for Israeli Palestinians and how the legislation in Israel is applied to its citizens in terms of equality and non-discrimination.

2.2 Discriminatory Laws and Policies in Israel

According to institutes, such as Adalah - The Legal Center for Arab Minority Rights in Israel¹²⁷ and the Institute for Middle East Understanding (IMEU)¹²⁸, there are many laws in Israel which are discriminating towards the Arab population of the State of Israel. While many laws are mentioned to be discriminatory towards Palestinian Israelis across many different areas of life, a couple of these laws are most frequently cited.

One of the most frequently mentioned discriminatory Israeli Laws is the Israel Lands Law from 1960. According to this law:

“ownership of state lands can only be transferred between the government and quasi-governmental agencies like the Jewish National Fund, which only leases land to Jews.”¹²⁹

This law leads to the development that it becomes challenging for Palestinian Israelis to gain access to land for either residential, commercial, or agricultural uses.¹³⁰ The Supreme Court of Israel has dealt with many cases on the discriminatory laws surrounding land possession. In 2000, the Supreme Court of Israel (HCJ) dealt with a case, the Ka’adan v. Israel Land

¹²⁵ Israel State Archives. (2017). The Declaration of Independence.

¹²⁶ Gutmann, E. (2024). Establishment of Israel: Analysis of Israel’s Declaration of Establishment - The Constitutional Authority of the Declaration.

¹²⁷ Adalah. (2023). Discriminatory Laws in Israel.

¹²⁸ Institute for Middle East Understanding. (2023). The 7 Most Racist Israeli Laws.

¹²⁹ Ibid.

¹³⁰ Ibid.

Administration case, in which the Arabic family Ka'adan sued the Israel Land Administration because they were denied the right to live in a Jewish settlement of The Jewish Agency, a Jewish oriented institution to which land was transferred by the state¹³¹, because of their ethnic origin. The Court held that the principle of equality is one of the foundational principles of the State of Israel and applies to every government authority¹³². As such, the Court stated that Israel had no permission to discriminate against citizens based on their ethnic origin and had to treat all its citizens equally.¹³³ Interesting to see in this case is that while one of the Basic Laws of Israel mentions that the land of the state can only be transferred to quasi-governmental agencies like the Jewish National Fund and The Jewish Agency, which leases its land only to Jews, the Supreme Court of Israel emphasizes the equal and non-discriminative nature of the State of Israel. This seems to point towards a difference in stance on the principle of equality by the Israeli Government and the Supreme Court of Israel. This difference in stance between the different branches of government of Israel will also be reflected when looking at the weakening of the rule of law in section 2.3.2.

Another discriminatory law is the Basic Law: Israel as the Nation-State of the Jewish People. Multiple articles within this Basic Law are seen as discriminatory the first one being the aspect of self-determination:

“b) The state of Israel is the nation-state of the Jewish people, in which it actualizes its natural, religious, and historical right for self-determination.
c) The actualization of the right of national self-determination in the state of Israel is unique to the Jewish people.”¹³⁴

According to this particular article in this Basic Law, the right to self-determination is a human right that involves “the rights of all peoples to pursue freely their economic, social and cultural development without outside interference.”¹³⁵, which is unique only to the Jewish people. It leaves out the mention of the other minority populations of Israel, the Palestinian Israeli minority included. As specified by the CERD “governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin.”¹³⁶ The statement of Israel that national self-determination is unique to the Jewish people would thus infringe upon the right of self-determination as mentioned in the ICERD. However, apart from the discriminatory nature of Article 1 within this Basic Law, Article 7 also seems to be discriminatory:

“The state views Jewish settlement as a national value and will labor to encourage and promote its establishment and development.”¹³⁷

This article points towards inequality since it promotes the establishment and development of Jewish settlements while disregarding the establishment and development of settlements of

¹³¹ Ka'adan v. Israel Land Administration, HCJ 6698/95, March 8, 2000.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Basic Law: Israel as the Nation State of the Jewish People. (2018). Art. 1 (b-c).

¹³⁵ Cats-Baril, A. (2018). IDEA Constitution Brief: Self-determination, p. 3.

¹³⁶ UN Committee on the Elimination of Racial Discrimination. (1996). General Recommendation No. 21, p. 2.

¹³⁷ Basic Law: Israel as the Nation State of the Jewish People. (2018). Art. 7

non-Jewish communities. It also disregards the promotion of the cohabiting of all communities, whether Jewish or non-Jewish. This, it could be said, shows the segregating nature of the Article since it does not promote a harmonious existence between Jewish and non-Jewish communities but instead focuses on establishing purely Jewish settlements. The view that this article is discriminatory is also supported by Adalah, because it “entrenches racial discrimination and exclusion in relation to matters of “Jewish settlement”, including land allocation, housing policy, planning and construction, funding for local authorities, and land and housing-related financial incentives.”¹³⁸. Apart from the promoting of Jewish settlements as a national value within Israel it also promotes Jewish settlements within the OPT. The fact that this privilege is not laid down for Arabic people can be seen as discriminatory and segregatory.

A third frequently mentioned discriminatory law is The Law of Return of 1950. This law must not be confused with the right of return, since the Law of Return is a law within the Israeli framework that grants Jews worldwide the right to migrate and settle in Israel¹³⁹, while the right of return is a universal human right. This Law has laid down that all Jews immigrating into Israel who have the desire to settle in the state will have the right to Israeli citizenship.¹⁴⁰ While this law is made earlier than Article 7 in the Basic Law: Israel as the Nation-State of the Jewish People, which came into effect in 2018, the two laws relate to each other as both promote the settlement of Jewish nationals and non-nationals of Israel within Israeli territory. When remembering that access to return, and thus to citizenship, by returnee Palestinians is denied by the State of Israel based on their ethnic origin, the Law of Return gets a rather discriminatory character.

Besides these previously discussed laws that can be said to be explicitly discriminatory and segregational, some Israeli laws and policies are not expressly discriminatory but do have such an effect due to the already unequal foot that Jewish and minority populations live on compared to each other. An example of such a law is the section in The Economic Efficiency Law from 2009 on child vaccinations and child allowances.¹⁴¹ This specific section mentions that children who do not receive the vaccinations that the Israeli Ministry of Health recommends will not be provided with child allowances. However, because of the already existing inaccessibility of health care by some minority groups, such as the Arab Bedouin, this law has a discriminatory character that is not expressly mentioned.

In conclusion, there is not only a gap in the protection of the rights of equality and nondiscrimination for minority groups in Israel, such as the Palestinian Israelis but some laws and policies in Israel even actively violate that right to equality. This violation, however, comes in two forms. One is that some laws and policies are discriminatory in nature, meaning that they explicitly distinguish between Jewish and non-Jewish communities, such as Article 1 of the Basic Law: Israel as the Nation-State of the Jewish People. The second form is that there are also laws and policies in place that are not discriminatory in nature, but that have a segregating effect because of the societal divide between the Jewish and non-Jewish

¹³⁸ Adalah. (2019). The Illegality of Article 7 of the Jewish Nation-State Law: Promoting Jewish Settlement as a National Value. Adalah Position Paper, p. 2

¹³⁹ Institute for Middle East Understanding, *supra* note 127

¹⁴⁰ Ibid.

¹⁴¹ Adalah. (2024). Child Vaccinations and Child Allowances - Economic Efficiency Law.

communities. These second forms of laws and policies also seem to make the divide between communities bigger.

2.2.1 Discrimination in Practice

Apart from the discriminatory laws and policies active within Israel, these are not the only causes of the divide between Jewish and non-Jewish communities within the State of Israel. According to The Association for Civil Rights in Israel (ACRI), racial discrimination between the Jewish Israeli and the Arab Israeli and Palestinian populations continues to be very much alive, however, this discrimination is most pervasive within Israeli society¹⁴², which can be seen back in the “deep resentment toward the Arabs”¹⁴³ within the Jewish Israeli population, “where there remains a strong opposition to Arab citizen’s equal rights”¹⁴⁴. This view is also shared by Tamir, who explains that “Israeli society has failed to fully internalise values of inequality. In terms of legal jargon, individuals continue to claim and exercise ‘sole and despotic dominion’ over their private property to avoid contact with individuals belonging to certain minority groups.”¹⁴⁵ The reluctance to engage with members from another community in the private sphere leads to the exclusion of those avoided community members in the public sphere.¹⁴⁶ Consequently, this creates an unequal footing for non-Jewish communities in society that makes them more exposed to the inexplicitly discriminatory laws mentioned in the previous section. The fact that the relations between Jewish and non-Jewish communities play a big part in the segregation of the non-Jewish communities poses a problem for taking action to guarantee the rights to equality and nondiscrimination. Because of the gap between the law in the books and the law in practice¹⁴⁷, it seems as if just bettering the Israeli legislative system would not be enough to ensure a peaceful and coexistent society.

According to Rubinstein and Jacobson, there is a reason that there are numerous laws and policies in Israel that do not adhere to the equality clause in the Declaration of the Establishment of the State of Israel. They mention that because of the State’s difficult history and continuous conflicts, this has had to have harmed the status of the Arab minority in Israel: “Such a reality must have a negative impact on the status of the Arab minority in Israel, even if it causes wrongs towards many Arab citizens.”¹⁴⁸ Not only can it be said that the State’s difficult history with its continuous conflicts has had to have led to laws and policies that have a discriminatory effect, but it can also be applied to the view of the Jewish community towards non-Jewish communities, such as the Palestinian Israelis. Due to the extensive history, feelings of resentment may currently be translated into segregational and discriminatory practices. Many NGO reports have been written on segregational and discriminatory practices. Most of these reports have been written regarding the situation in

¹⁴² The Association for Civil Rights in Israel. (2019). Equality and Anti-Racism.

¹⁴³ Pedahzur, A.; Yishai, Y. (1999). Hatred by Hated People: Xenophobia in Israel. In *Studies in Conflict and Terrorism*, Volume 22, p. 111

¹⁴⁴ Barak-Corren, N.; Feldman, Y.; Gidron, N. (2018). The Provocative Effect of Law: Majority Nationalism and Minority Discrimination. In *Journal of Empirical Legal Studies*, Volume 15(4), p. 957

¹⁴⁵ Tamir, M. (2016) The Freedom to Exclude: The Case of Israeli Society. In *Israel Law Review*, Volume 49(2), p. 237

¹⁴⁶ *Ibid.*, [238]

¹⁴⁷ *Ibid.*, [237]

¹⁴⁸ Rubinstein, A.; Jacobson, A. (2009). Israel and the Family of Nations: The Jewish Nation-State and Human Rights, p. 166. Schocken Publishing House, Tel Aviv.

the OPTs as well as concerning the lack of human rights for Palestinians in the OPTs during this recent war between the State of Israel and Hamas. Accounts of deprivation of the right to education for children in Gaza¹⁴⁹, reports of restrictions to healthcare for the Palestinians in the Gaza Strip¹⁵⁰, as well as reports on the lack of Palestinians' civil, political, economic, social, and cultural rights¹⁵¹ have been made by the UN. These restrictions on fundamental human rights are discriminatory since Jewish Israeli citizens in Israel do not seem to lack any of these rights. Apart from the reporting of discriminatory practices in the State of Israel against Palestinians, there have also been reports on the harassment of human rights defenders: "Palestinian and Israeli human rights defenders, who peacefully bring public attention to these violations, are slandered, criminalised or labeled as terrorists."¹⁵² This shows that there is little to no willingness to improve the human rights conditions for those who, at this moment, do not receive the rights they have a claim to.

The following sections will dive deeper into the state of apartheid which was created by, among others, segregational laws, and the weakening rule of law which recently has led to the development of discriminatory laws, such as the Basic Law of Israel: Israel as a Nation-State of the Jewish People, like discussed above.

2.3 Law and Practice

While the two previous sections have discussed the law and practice regarding equality and non-discrimination in Israel separate from one another, the next section will combine both law and practice to examine the state of apartheid and the weakening rule of law.

2.3.1 State of Apartheid

When hearing the word 'apartheid', people often think about South Africa and its period in history where racial segregation was the norm. Meant as a word for the situation in South Africa, where discriminatory laws and policies led to segregation between the racial populations, the word is now often mentioned in connection with the situation in Israel. Many argue, that in Israel, discriminatory laws and policies would lead to segregation between, not racial populations, but ethnic and religious populations, in favour of one, the Jewish, and antagonistic towards the other, the Arabs. The definition of 'apartheid' differs in small details, however, the most common definition is as mentioned in the Rome Statute of the International Criminal Court (ICC). In this statute, apartheid is described as a crime against humanity¹⁵³ and as:

¹⁴⁹ United Nations Human Rights Council. (2021). Gaza's Children Deprived of Their Right to Education. A/HRC/47/NGO/41

¹⁵⁰ United Nations Human Rights Council. (2020). Gaza 2020: Uninhabitable and Unnoticed as Israel's Restrictions Tighten. A/HRC/45/NGO/165

¹⁵¹ Office of the United Nations High Commissioner for Human Rights. (2023). Situation of human rights in the Palestinian territories occupied since 1967. A/78/545

¹⁵² United Nations Human Rights Council. (2021). Silencing Opposition and Shrinking Civil Society Space in Palestinian territories. A/HRC/46/NGO/22

¹⁵³ Rome Statute of the International Criminal Court, Art. 7(1j).

Inhumane acts “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”¹⁵⁴ and “committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;”¹⁵⁵

The Rome Statute of the ICC has also labelled the term ‘apartheid’ as a more worldly phenomenon that can not only be applied to the situation in Africa between 1948 and 1994¹⁵⁶ but also to other countries in which the situation meets the requirements mentioned in the statute. The systematicness of a crime, which is noted as one of the criteria for the crime to be called a crime of apartheid, points towards a structure, meaning that the attack against a certain population should be methodical and orderly. Seen as the discriminatory and segregating laws and policies have all gone through a certain process to be adopted and be brought into effect, it would be fair to say that the using of these laws and policies with a segregating effect between the Jewish and Arab populations is indeed systematic, methodical and orderly. The fact that some of these laws, such as the Basic Law of Israel: Israel as a Nation-State of the Jewish People have been made constitutional, points towards a systematic approach as well. Apart from the systematicness of the crime, there also needs to be knowledge of the attack against a certain part of the population. Seen as there is quite some scholarly and non-scholarly work out on the internet on the effect of the laws and policies on specifically the Palestinian Israeli population of Israel to which policymakers would have access, it seems as if, at least to some degree, there is adequate knowledge on the discriminatory and segregating effect of these laws and policies. Especially laws that are explicitly discriminatory such as, for instance, the Israel Lands Law from 1960, seem to be made with the knowledge of being discriminatory and segregating. When following the criteria mentioned in the definition of the ICC Rome Statute, it thus seems like the State of Israel could be called a state of apartheid. This has also been recognised by the UN Economic and Social Commission for Western Asia (ESCWA): “Israel uses strategic fragmentation as the main tool to establish institutionalized racial oppression and domination over the indigenous Palestinian people as a whole, within the definition of the crime of apartheid.”¹⁵⁷. They also mention that Israel’s laws, policies, and practices that target the Palestinians, can be seen as a form of this strategic fragmentation that makes Israel a state of apartheid.¹⁵⁸

Apart from the criteria mentioned in the definition, there have also been different approaches to linking ‘apartheid’ with the State of Israel. Greenstein describes seven pillars of apartheid, which according to him can be said to all exist in the OPTs.¹⁵⁹ These seven pillars, although not developed by Greenstein himself, have been important pillars that each describe a certain discriminatory and segregating policy, such as the Land Act and the Population Registration Act in South Africa¹⁶⁰, which according to Greenstein are thus

¹⁵⁴ *Id.*, Art. 7(1)

¹⁵⁵ *Id.*, Art. 7(2h)

¹⁵⁶ The Martin Luther King, Jr. Research and Education Institute. (2024). Apartheid.

¹⁵⁷ United Nations Human Rights Council. (2020). Civil Society Welcomes Mounting Recognition of Israel’s Commission of the Crime of Apartheid Against Palestinian People. A/HRC/45/NGO/120. p.2

¹⁵⁸ *Ibid.*

¹⁵⁹ Greenstein, R. (2020). Israel, Palestine, and Apartheid. In *Insight Turkey*, Volume 22(1), p.73.

¹⁶⁰ Budlender, G. (1991). The Pillars of Apartheid. In *South African Journal on Human Rights*, Volume 7(3), v-vi

comparable with the prejudiced and segregating policies in the OPT's under Israel's rule. The discriminatory and segregating laws and policies within Israel are part of different policy areas. For instance, the Israel Lands Law is a policy on land possession, while the Basic Law of Israel: Israel as a Nation-State of the Jewish People has discriminatory effects on many areas such as economic, social, cultural, and educational spheres. Although there can be debates around the question of whether all seven pillars of apartheid are met, which Greenstein argues is the case, seeing the number of discriminatory laws and policies towards Palestinian Israelis in different policy areas, there is a significant sign that all seven pillars are met.

Still, some scholars disagree with the label 'state of apartheid' that Israel has been associated with. According to some linguistics, the word 'apartheid' as it is used in the context of Israel nowadays cannot be compared to the word 'apartheid' as it was used in South Africa since its meaning has changed because of the different historical-political circumstances.¹⁶¹ It has also been mentioned that apartheid as present in South Africa "has almost nothing in common" with that of Israel"¹⁶² and that there is no class of citizens within Israel that "is denied self-determination as with apartheid in South Africa."¹⁶³ This last statement from Moore, could, however, be argued as incorrect seen as one of the articles we discussed above, namely article 1c of the Basic Law: Israel as the Nation-State of the Jewish People, mentions that self-determination is unique only to the Jewish population, leaving out any mention of the minority populations of Israel and thus, in fact, denying some classes of citizens, namely all non-Jewish citizens, the right to self-determination.

2.3.2 The Weakening Rule of Law

These last few years, the rule of law within Israel has been continuously declining. The rule of law is "a durable system of laws, institutions, norms, and community commitment that delivers four universal principles: accountability, just law, open government, and accessible and impartial justice."¹⁶⁴ More specifically this means that not only is the government of a state with a proper rule of law accountable under the law, but the laws are clear, transparent, and applied evenly and equally. While the rule of law is an important aspect of an ideal democracy, the rule of law in Israel has over the past few years diminished in strength. This can be seen back in situations where the government, currently under the leadership of Prime Minister Benjamin Netanyahu, tries to weaken the accountability of the government under the law. An example of one such situation is the attempt of the government to get rid of the need for reasonableness when creating new legislation. This was done by amending the Basic Law: the Judiciary of Israel¹⁶⁵, which, more specifically, states that:

"Notwithstanding the provisions of this Basic Law, any body vested with the authority to adjudicate according to the law, including the Supreme Court sitting as a High Court

¹⁶¹ Ellis, D. (2019). Apartheid. In *Israel Studies*, Volume 24(2), p. 66.

¹⁶² Franck, T.M. (1985). *Nation against nation: What happened to the U.N. dream and what the U.S. can do about it*, p. 219. Oxford University Press, Oxford, UK.

¹⁶³ Moore, J.N. (1971). The Arab-Israeli Conflict and the Obligation to Pursue Peaceful Settlement of International Disputes. In *University of Kansas Law Review*, Volume 19(3), p. 429

¹⁶⁴ World Justice Project. (2024). *What is the Rule of Law?*.

¹⁶⁵ Basic Laws of Israel: The Judiciary (Amendment No. 3). (2023)

of Justice, shall not consider the reasonableness of the decisions of the government, the Prime Minister, or any other minister, and shall not issue an order in this regard; in this subsection, “decision” is any decision, including on matters of appointments or decisions to refrain from exercising any authority.”¹⁶⁶

This amendment, also called the ‘reasonableness bill’, would ensure that administrative law bodies in Israel, such as the Supreme Court of Israel (HCJ), would not have the right to invalidate decisions made by either elected or public officials because the decision would be deemed too unreasonable, but instead had to let the new laws and policies come into effect regardless of their reasonableness. After the announcement of this amendment in July 2023, many protests broke out among Israeli citizens protesting this amendment. Not only did protesters flood “the streets in opposition to the proposed changes, and in support of the judiciary.”¹⁶⁷, a large number of Israeli Air Force personnel even threatened not to report for duty if the government continued its plans to restrict judicial intervention based on reasonableness¹⁶⁸, leading to a crisis regarding the security of the State.¹⁶⁹ This movement of resistance shows the discontent of a large part of Israeli society with the State’s plans to curb the power of the judiciary and weaken the rule of law.

At the beginning of 2024, the case surrounding the ‘reasonableness bill’ reached the Supreme Court. In the Movement for Quality Government in Israel v. the Knesset case¹⁷⁰, The HCJ reasoned that not only did the HCJ hold the authority to conduct a judicial review of basic laws and to intervene in exceptional and extreme cases, but Amendment No. 3 was also an extreme deviation from the usual authority of the Israeli government. As a result, the amendment was declared void¹⁷¹. The fact that the Supreme Court declared Amendment No. 3 void, points towards a difference in stance regarding the powers of the branches of government. The outcome of this case, with the result of the voidness of Amendment No.3 does not mean that the weakening of the rule of Law of the State of Israel has stopped, it could, however, be seen as a step in the right direction. This particular amendment constitutes one of four elements of the initial stage of the Israeli government’s attempt at reforms¹⁷² to rebalance the branches of government¹⁷³ and thus eventually weaken the State’s rule of law. The next steps of the current Israeli government’s attempt to weaken the rule of law and strengthen the power of the government will without a doubt proceed in the future.

The reason why the weakening of the rule of law in Israel is so important for the equal rights of Palestinian Israelis is that this gives the Israeli government more freedom in creating laws and policies that can be applied unequally over the population as well as adopt laws and

¹⁶⁶ Adalah. (2023). Adalah Position Paper: The unconstitutionality of the new Basic Law: The Judiciary (Amendment No. 3).

¹⁶⁷ Roznai, Y.; Dixon, R.; Landau, D.E. (2023). Judicial Reform or Abusive Constitutionalism in Israel. In Israel Law Review, Volume 56(3), p. 293

¹⁶⁸ Kubovich, Y.; Harel, A. (2023). Over 1,000 Israeli Air Force Personnel to Suspend Reserve Duty if Netanyahu’s Judicial Coup Continues.

¹⁶⁹ Gross, A. (2023). An Unreasonable Amendment: The Constitutional Capture in Israel.

¹⁷⁰ Movement for Quality Government v. Knesset, HCJ 5658/23, 1 January 2024

¹⁷¹ *Id.*

¹⁷² Levush, R. (2024). Israel: Legislation Abolishes Reasonableness as a Standard for Judicial Review of Government’s Decisions.

¹⁷³ Cohen, A.; Shany, Y. (2024). The HCJ Strikes Back: Israel’s Supreme Court Pulls the Plug on “Judicial Reform”.

policies which would be discriminatory and segregative in their nature to the extent of unreasonableness. Instead of having a Supreme Court that has the capability of checking new laws and policies for constitutional correctness, the attempts of the current Israeli Government have tried to undermine the power of the Supreme Court and other checks and balances needed for a government with proper accountability. Since there are already existing laws that seem to give an advantage to the Jewish Israeli population while ignoring the minority populations, such as the Palestinian Israelis, the chance that the further weakening of the rule of law will lead to greater discriminatory laws and policies is realistic. Especially, since the resentment towards Palestinian Israelis is currently rising in Israel among the citizens as well as actors of the government due to the Israel-Hamas war.

2.4 Conclusion

While the international framework of equality and non-discrimination is well-developed, the Israeli framework is somewhat lacking. There are no direct laws in Israel protecting the rights of equality and non-discrimination, nor the right for minority groups. The only protection for equality and non-discrimination the citizens of Israel have are the equal rights mentioned within the Declaration of the Establishment of the State of Israel. The bindingness of this only document within the Israeli legal framework that expressly mentions the equal rights of the State's citizens is also highly debated by Israeli scholars and judges, which does not help in its role as a protecting document for the equal rights of minority populations. Besides the legal framework of equality and non-discrimination, it has also been important to examine how the laws and policies work within a country. In Israel, the practical working of some laws, like The Economic Efficiency Law, are not deliberately discriminatory but seem to have a discriminatory effect due to the circumstances that have been created for some minority groups in Israel following the history of the conflict. In contrast, other laws, such as the Basic Law of Israel: Israel as a Nation-State of the Jewish People, appear to purposefully leave out all non-Jewish populations in the fabric that makes up the foundation of the state and the mention of the right to self-determination.

Apart from the international and Israeli legal framework, this chapter has also looked at the state of apartheid and Israel's declining rule of law. Discriminatory and segregating laws and policies towards minority populations within Israel, more specifically Palestinian Israelis, can be debated to have resulted in the creation of a state of apartheid, and the continuing weakening of the rule of law within Israel added to this state of apartheid, has resulted in a less-than-ideal situation for the Arab population of Israel. Not only is Israel an apartheid State in which segregating laws affect all areas of life, but the weakening law of rule within Israel by the current Israeli government also leads to the fear of many people, Jewish as well as Arab, that the government will over-exercise their power and create laws and policies that can not only worsen the living conditions of the minority population of the country but also lead to a tyrannical type of government. While this fear exists, it is not all easy for the Israeli government to realize their planned stages of weakening the rule of law. As seen in the case of Movement for Quality Government in Israel v. the Knesset, the Supreme Court of Israel is trying to lessen the government's impact on the rule of law and return to a healthy division of the branches of government.

This chapter has looked at the theoretical aspect of the law and at the practical aspect of how these laws come into effect in real life, however, there still seems to be a disconnect between the right of return and the situation of equal rights for Palestinian Israelis within Israel. This disconnect still prevents us from responding to the question we have been looking to answer, namely how the discriminatory laws and policies within Israel impact the right of return of Palestinian refugees. The third and last chapter will examine this disconnect and try to bridge the gap between the first two chapters and the answer that we seek to find.

Chapter 3: Returning to Inequality - The Impact of Discriminatory Laws on Palestinian Refugees

This last chapter aims to answer the main research question of how discriminatory laws and policies in Israel affect the realisation of the right of return of Palestinian refugees. This will be done by briefly summarising the findings from the first two chapters and critically assessing how the discriminatory laws, policies, and practices in Israel towards minority populations such as the Palestinian Israelis and the right of return of Palestinian refugees impact each other.

The first chapter, which examined the right of return under international law and whether this right is truly a right for Palestinian refugees, showed us several interesting findings. Firstly, the right of return is extensively documented within international law in documents such as the ICCPR and the ICERD. However, due to interpretational issues the application of the right of return is not straightforward. There is no simple definition of what it means to return to 'your own country' and of what it means to be 'arbitrarily' deprived of your right of return, which leads to the fact that it becomes immensely difficult to apply it to the situation at hand. Because of this array of different interpretations, it becomes possible for states to apply a different interpretation than the one that was meant to be the correct interpretation upon the drafting of the right. Secondly, there is much debate among scholars on the exact meaning of the definition of the right of return and thus consequently on whether there exists a right of return for Palestinian refugees specifically. While some argue that the right of return is only reserved for citizens of the state they seek to return to¹⁷⁴, others argue that the right of return is also applicable to those who subjectively feel attached to the state.¹⁷⁵ Apart from the fact that there exists a difficulty in applying the right of return due to the interpretational issues and differences, this chapter has argued that there is indeed a right of return for Palestinian refugees.

The second chapter of this thesis examined the international and national legal framework of the rights of equality and non-discrimination as well as the discriminatory laws and practices in Israel against the Palestinian Israeli population. What has become clear from this part is that while the right to equality and nondiscrimination are well documented within the international legal framework, this is not the case regarding the national legal framework. Equality and nondiscrimination are not properly documented neither for minority groups or majority groups within Israel. While the right to equality is ensured in conjunction with rights such as privacy¹⁷⁶, there exists no explicit right to equality and non-discrimination within Israel's national legal framework. Thus, a gap exists between international and national documentation and protection of the rights to equality and non-discrimination. Moreover, this chapter has established that in practice, numerous laws are explicitly discriminatory. The Basic Law: Israel as the Nation-State of the Jewish People of 2018, as well as laws that have a discriminatory and segregating effect due to the underlying societal grievances towards people from minority communities, are examples of such discriminatory laws. Due to the fact

¹⁷⁴ Zilbershats, *supra* note 40, at 201

¹⁷⁵ *Ibid.*

¹⁷⁶ Basic Laws of Israel: Human Dignity and Liberty, Art. 7(a)

that the State of Israel has, among others, these discriminatory and segregating laws and policies, many international organisations, such as the UN¹⁷⁷, Human Rights Watch (HRW)¹⁷⁸, and Amnesty International¹⁷⁹ as well as courts, such as the ICJ¹⁸⁰, have argued that Israel is a state of apartheid. This can be seen back in the discriminatory practices in the State of Israel as well. In the future, the discriminatory and segregating laws and policies in Israel attributing to a state of apartheid, may become more frequent due to the rising weakening of the Rule of law. Over the past few years, the Israeli government has aimed to lessen the distinction between the branches of government and transfer some of this power towards the government and its actors. This weakening of the branches of power and thus of the power of the judiciary branch can lead to the development that it becomes much easier to enact laws since the role of the government becomes greater while the role of the judiciary becomes less.

This chapter has also perceived that not only does the state play a part in the segregation and discrimination of minority groups such as the Palestinian Israelis, by means of discriminatory laws and policies, but society plays a role as well. Because of the reluctance of members of a particular community to engage with members from another community¹⁸¹, this segregation largely continues. As discovered during the research for this thesis, many aspects prevent the realisation of the right of return, legally as well as politically and socially. This leads to the conclusion that the discriminatory laws and policies in and of themselves are not the only cause of the inability to claim the right of return as a Palestinian refugee, many more aspects weigh into the realisation of the right of return. However, knowing that the discriminatory laws and policies in Israel are not the only facet responsible for the inability to claim the right of return does not explain in which manner the legal and practical situation in Israel affects the right of return of Palestinian refugees. The following part of this chapter will examine the exact effect of the inequality and discrimination of Palestinian Israelis on the realisation of the right of return with the aim of answering the research question critically.

Effect of Inequality and Discriminationary Laws and Policies on the Right of Return

One impact of the discriminatory laws, policies, and practices in Israel on the realization of the right of return of Palestinian refugees is that the discriminatory laws, policies, and practices do not allow the full expression of the right of return. As discussed in the previous chapters, the right of return, for many Palestinian refugees, is the only solution to “adequately redress the injustice of the expulsion and dispossession.”¹⁸² that happened during past events. Acknowledging that the Palestinians have a right to the land that is now known as Israel, and thus also granting Palestinian refugees their right of return to this land, is according to the Palestinians the only just and moral way of rectifying the injustice that has been done by the expulsion and dispossession that has taken place in history. The justice that can be acquired

¹⁷⁷ United Nations Human Rights Council, *supra* note 156

¹⁷⁸ Shakir et al. (2021). A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution.

¹⁷⁹ Amnesty International. (2022). Israel’s Apartheid Against Palestinians: A look into decades of oppression and domination.

¹⁸⁰ International Court of Justice. (2022). UN: ICJ denounces Israel’s system of apartheid against Palestinians.

¹⁸¹ Tamir, *supra* note 144), at 238

¹⁸² Albanese; Takkenberg, *supra* note 3, at 343

by means of the realization of the right of return can, however, only be completed when they are able to return to a state in which they can enjoy collective rights and a national identity¹⁸³ as well as equal and full political rights for all”.¹⁸⁴ Returning to the State of Israel might thus only be realistic when they are met with full and equal rights, not just from a living perspective, but also from a perspective of what they perceive as justice. From the examination of the legal framework in Israel surrounding the rights of equality and nondiscrimination as well as from the examination of the current situation within the State of Israel, it has become clear that as a minority group, especially an Arabic minority group such as the Palestinian Israelis, in a country with a majority of Jewish Israelis, it cannot be said that the Palestinian Israeli population are full citizens, but rather second-class citizens. There is namely a reported lack of civil, political, economic, social, and cultural rights for Palestinian citizens of Israel.¹⁸⁵ According to Ghanem, while the economic situation and political influence of the Palestinian Israelis have steadily improved over the decades, since the beginning of Netanyahu’s prime ministership “they have also seen their rights erode, as the government has taken a number of steps to disenfranchise them.”¹⁸⁶ This second-class citizenship that can be attributed to the Palestinian Israeli population becomes even more clear from the wording of Article 1 of the Basic Law: Israel as the Nation-State of the Jewish People, which declares Israel as the State of the Jewish people and leaves out any mention of the other minority populations present in the country. Instead of stating that Israel is a country for all its citizens equally, it treats minority populations as second-class citizens and prioritises the Jewish Israelis. If Palestinian refugees are allowed to return, but can, at the same time, not enjoy full and equal citizenship alongside the Jewish Israeli population, it is questionable whether the purpose of returning in the first place is fulfilled and whether the justice that Palestinians think they will receive once recognized as being able to return is served when their return does not mean that they will be full and equal citizens within the state. The discriminatory laws, policies, and practices towards the Palestinian Israeli community can thus be said to have an impact on the realizability of the right of return of Palestinian refugees since the situation of return is not a situation that realistically Palestinian refugees want to and can return to.

A somewhat more indirect impact of discriminatory laws, policies, and practices in Israel on the realization of the right of return of Palestinian refugees is the fact that these discriminatory laws, policies, and practices impact the view in society towards the other population leading towards a segregating society in which both Jewish and Arab populations barely come in contact with the other¹⁸⁷ resulting in a deep “social cleavage”.¹⁸⁸ This divide between the two groups, and the ‘unknown’ that stems from it, leads to feelings of anger and resentment towards the other. As seen within the previous chapter of this thesis, this deep resentment towards the Palestinian Israeli population leads to “a strong opposition to Arab

¹⁸³ Shemer-Kunz, *supra* note 7, at 12

¹⁸⁴ Shemer-Kunz, *supra* note, at 4

¹⁸⁵ Situation of human rights in the Palestinian territories occupied since 1967. A/78/545

¹⁸⁶ Ghanem, A. (2016). Israel’s Second-Class Citizens: Arabs in Israel and the Struggle for Equal Rights. In *Foreign Affairs*, Volume 95(4), p.37

¹⁸⁷ Peleg, I.; Waxman, D. (2011). Introduction: The Other Palestinian Problem. In *Israel’s Palestinians: The Conflict Within*, (p. 1-16).

¹⁸⁸ *Ibid.*, [12]

citizen's equal rights."¹⁸⁹ This overall antagonistic view towards the Palestinian Israeli minority, and its accompanying unequal and discriminatory treatment due to the discriminatory laws and policies as well as the social environment, lead to the inability to exercise the right of return for Palestinian refugees.

In conclusion, the answer to the question of how discriminatory laws and policies in Israel affect Palestinian refugees' ability to exercise their right of return is twofold. Due to the fact that the right of return for Palestinian refugees to a state in which they are full citizens with equal rights is a means for the Palestinian people to address the historical acts of injustice, the returning of Palestinian refugees to the current State of Israel is not viable. Regardless of whether Israel acknowledges the right of return for Palestinian refugees or not, the fact that the discriminatory laws, policies, and practices in Israel partly lead to a state of apartheid in which the Palestinian Israeli minority population do not enjoy full citizenship with equal rights significantly diminishes the ability to exercise the right of return for Palestinian refugees. There furthermore is also a societal aspect that plays a role and which serves as an intermediary between discriminatory laws, policies, and practices and the ability to exercise the right of return. Discriminatory laws, policies, and practices have led to the creation of a segregated society in which both populations rarely come in contact with each other which leads to feelings of resentment and discrimination within the social environment. This again leads to the inability to exercise the right of return since a justful return for Palestinian refugees means the return to a state in which they are able to enjoy full and equal rights.

Concluding Remarks

Before beginning this research, the complexity of the situation at hand was not unfamiliar, however, the more the situation became clear during the research the more the feeling of hope for a peaceful solution to the conflict disappeared. Legal as well as political, social, and historical facets play an important role in the possibility of peace between the Palestinians and Israelis, however maybe more important is the fact that concessions must be made by either party. As unlikely as it seems that the Palestinian refugees will ever be able to invoke their right of return to the State of Israel, some action to guarantee and safeguard basic human rights nevertheless must be undertaken. Behind the scenes, international organisations, legal scholars, and political actors are working endlessly to try and come up with practical solutions not only for the recent war between Hamas and Israel but for the victims of the conflict between Palestinians and Israelis who have been involved, as well. Even if the right of return continues to be a myth, the fact remains that the living situation of the Palestinian refugees as well as the Israeli population cannot continue as it is. During the research, multiple problems arose which need to be addressed going forward. Firstly, addressing the current gap between the international and national legal frameworks on equality and non-discrimination, which lacks equal rights protection for all Israeli citizens, is vital in safeguarding the human rights every citizen has a right to and aiming to prevent certain situations in which discriminatory laws and policies give rise to a segregating society. Important when addressing this gap is the weakening rule of law in Israel, which increasingly

¹⁸⁹ Barak-Corren; Feldman; and Gidron, *supra* note 144

shifts the power of legislating towards government and takes the power of constitutional review from the Supreme Court. Secondly, the lack of protections for minorities on a national level needs to be addressed. Currently, the lack of rights protecting the minority populations of Israel is attributable to a state of apartheid in which minority populations such as the Palestinian Israelis have to contend with discriminatory and segregating laws and policies. Having a legal framework on the rights of minority populations within the region of the Middle East and/or in the State of Israel specifically will safeguard their rights to equality and nondiscrimination at least to some extent as well as prevent certain situations in which discriminatory laws and policies give rise to a segregating society. Lastly, there needs to be put more effort in initiatives that try to bring together the different communities in Israel. It has become clear that the engagement between communities in Israeli society also affects the segregational nature of the society. This reluctance to engage with the members from another group affects the processes of solution-finding. By not seeing the other side as human with just as much history as your own side, agreements on solutions and possible peace are still far to seek. Scholars of conflict resolution and reconciliation have even come to “recognize the important role of local initiatives and people-to-people activities in peace-building processes”.¹⁹⁰ Aside from the question on the return of Palestinian refugees, the most important thing going forward is the guaranteeing of the human rights everyone has a claim to, whether a citizen of a Western country or a Palestinian living in Israel or the OPT.

¹⁹⁰ Weder, N.; García-Nieto, R.; Canneti-Nisim, D. (2011). Peace, Reconciliation and Tolerance in the Middle East: The Impact of People-to-People Peace Building Initiatives Among Israeli Jews and Palestinians Who Lost a First-Degree Family Member Due to the Conflict: A Pilot Study. In *International Journal of Mental Health*, Volume 39(4), p. 60

Bibliography

1948.org.uk. (2024). Lest we forget - Palestine and the Nakba. On:

<https://www.1948.org.uk/maps/phased-occupation/2993656>

Adalah. (2019). The Illegality of Article 7 of the Jewish Nation-State Law: Promoting Jewish Settlement as a National Value. Adalah Position Paper. On:

https://www.adalah.org/uploads/uploads/Position_Paper_on_Article_7_JNSL_28.03.19.pdf

Adalah. (2023). Discriminatory Laws in Israel. On: <https://www.adalah.org/en/law/index>

Adalah. (2023). Adalah Position Paper: The unconstitutionality of the new Basic Law: The Judiciary (Amendment No. 3). On:

<https://www.adalah.org/uploads/uploads/Position%20Paper%20Reasonableness%2016.08.2023%20Final.pdf>

Adalah. (2024). Child Vaccinations and Child Allowances - Economic Efficiency Law. On:

<https://www.adalah.org/en/law/view/507>

Agterhuis, S. (2004). The Right to Return and its Practical Application, p. 1-31.

<https://prn.mcgill.ca/research/papers/agterhuis.pdf>

AJLabs. (2024). Israel-Gaza war in maps and charts: Live tracker. On:

<https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-in-maps-and-charts-live-tracker>

Amnesty International. (2022). Israel's Apartheid Against Palestinians: A look into decades of oppression and domination. On: <https://www.amnesty.org/en/latest/campaigns/2022/02/israels-system-of-apartheid/>

Albanese, F.P.; Takkenberg, L. (2020). Palestinian Refugees in International Law. Oxford University Press.

Arab Center Washington DC. (2023). Shifting the Paradigm: The One-State Solution as a Path to Peace. On:

<https://arabcenterdc.org/resource/shifting-the-paradigm-the-one-state-solution-as-a-path-to-peace/>

Barak-Corren, N.; Feldman, Y.; Gidron, N. (2018). The Provocative Effect of Law: Majority Nationalism and Minority Discrimination. In Journal of Empirical Legal Studies, Volume 15(4), p. 951-986.

<https://doi.org/10.1111/jels.12199>

BBC. (2017). 1967 war: Six days that changed the Middle East. On:

<https://www.bbc.com/news/world-middle-east-39960461>

BBC. (2024). What is Hamas and why is it fighting with Israel in Gaza? On:

<https://www.bbc.com/news/world-middle-east-67039975>

Blokhina, K. (2019). Geneva Conventions and their additional protocols. On:

https://www.law.cornell.edu/wex/geneva_conventions_and_their_additional_protocols#:~:text=While%20the%201949%20Geneva%20Conventions,legal%20instruments%20in%20the%20world.

Budlender, G. (1991). The Pillars of Apartheid. In South African Journal on Human Rights, Volume 7(3), v-vi.

<https://doi.org/10.1080/02587203.1991.11827842>

Cats-Baril, A. (2018). IDEA Constitution Brief: Self-determination. On:

<https://www.idea.int/sites/default/files/publications/self-determination-constitution-brief.pdf>

Cohen, A.; Shany, Y. (2024). The HCJ Strikes Back: Israel's Supreme Court Pulls the Plug on "Judicial Reform". On:

<https://www.lawfaremedia.org/article/the-hcj-strikes-back-israel-s-supreme-court-pulls-the-plug-on-judicial-reform>

- Ellis, D. (2019). Apartheid. In *Israel Studies*, Volume 24(2), p. 63-71.
<https://doi.org/10.2979/israelstudies.24.2.06>
- European Commission. (2023). International Humanitarian Law. On the European Commission website:
https://civil-protection-humanitarian-aid.ec.europa.eu/what/humanitarian-aid/international-humanitarian-law_en#:~:text=Related%20information-,What%20is%20it%3F,groups%20during%20an%20armed%20conflict
- European Parliament Policy Department. (2012). Policy Briefing - Shackled at home: The Palestinian minority in Israel, p.1-40.
https://www.europarl.europa.eu/meetdocs/2009_2014/documents/dplc/dv/palestinian_minority_/palestinian_minority_en.pdf
- Flapan, S. (1987). The Palestinian Exodus of 1948. In *Journal of Palestine Studies*, Volume 16(4), p. 3-26.
<https://doi.org/10.2307/2536718>
- Franck, T.M. (1985). *Nation against nation: What happened to the U.N. dream and what the U.S. can do about it*. Oxford University Press, Oxford, UK.
- Ghanem, A. (2016). Israel's Second-Class Citizens: Arabs in Israel and the Struggle for Equal Rights. In *Foreign Affairs*, Volume 95(4), p. 37-42. <https://www.jstor.org/stable/43946930?seq=6>
- Greenstein, R. (2020). Israel, Palestine, and Apartheid. In *Insight Turkey*, Volume 22(1), p.73-92.
<https://www.jstor.org/stable/26921169>
- Gross, A. (2023). An Unreasonable Amendment: The Constitutional Capture in Israel. On *Verfassungsblog*:
<https://verfassungsblog.de/an-unreasonable-amendment/>
- Gutmann, E. (2024). Establishment of Israel: Analysis of Israel's Declaration of Establishment - The Constitutional Authority of the Declaration. On:
<https://www.jewishvirtuallibrary.org/analysis-of-israel-s-declaration-of-establishment>
- Halperin-Kaddari, R.; Yadgar, Y. (2010). Religion, Politics and Gender Equality among Jews in Isreal. United Nations Research Institute for Social Development and Heinrich Boll Foundation 2010. On:
<https://ssrn.com/abstract=4065536>
- Hannum, H. (1987). The Right to Leave and Return in International Law and Practice. In *International Studies in Human Rights*, Volume 8, p. 1-189. <https://brill.com/display/title/9767>
- Hannum, H. (1996). The Status of the Universal Declaration of Human Rights in National and International Law. In *Georgia Journal of International & Comparative Law*, Volume 25(1), p. 287-397.
<https://digitalcommons.law.uga.edu/gjicl/vol25/iss1/13>
- International Court of Justice. (2022). UN: ICJ denounces Israel's system of apartheid against Palestinians. On:
<https://www.icj.org/un-icj-denounces-israels-system-of-apartheid-against-palestinians/>
- International Committee of the Red Cross. (2014). The Geneva Conventions of 1949 and their Additional Protocols. On the International Committee of the Red Cross website:
<https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>
- Institute for Middle East Understanding. (2012). The UN Partition Plan for Palestine. On the IMEU website:
<https://imeu.org/article/backgrounder-the-un-partition-plan-for-palestine>
- Institute for Middle East Understanding. (2023). The 7 Most Racist Israeli Laws. On the IMEU website:
<https://imeu.org/article/the-7-most-racist-israeli-laws>
- Israel Embassy. (2024). Israel in Maps: UN Partition Plan - Resolution 181 (1947). On:
<https://embassies.gov.il/MFA/AboutIsrael/Maps/Pages/1947%20UN%20Partition%20Plan.aspx>
- Israel State Archives. (2017). The Declaration of Independence. On:
<https://catalog.archives.gov.il/en/chapter/the-declaration-of-independence/>

- Jabareen, Y.T. (2012). Toward Participatory Equality: Protecting Minority Rights under International Law. In *Israel Law Review*, Volume 41(3), p. 635-676. DOI: [10.1017/S002122370000039X](https://doi.org/10.1017/S002122370000039X)
- Jerusalem Story. (2024). Green Line (The 1949 Armistice Agreement Line). On the Jerusalem Story website: <https://www.jerusalemstory.com/en/lexicon/green-line-1949-armistice-agreement-line>
- Kalman, M. (2003). The Palestinian Right of Return in International Law - The Israeli Perspective. In *Nexus A Journal of Opinion*, Volume 8, p. 43-60. <https://heinonline.org/HOL/P?h=hein.journals/nex8&i=47>
- Kaplan, E., Penslar, D.J., Sorkin, D.J. (2011). *The origins of Israel, 1882-1948: a documentary history*. University of Wisconsin Press.
- Khalidi, R.I. (1992). Observations on the Right of Return. In *Journal of Palestine Studies*, Volume 21(2), p. 29-40. <https://www.jstor.org/stable/2537217>
- Kochavi, A.J. (1998). The Struggle against Jewish Immigration to Palestine. In *Middle Eastern Studies*, Volume 34(3), p. 146-167. <https://www.jstor.org/stable/4283956>
- Kubovich, Y.; Harel, A. (2023). Over 1,000 Israeli Air Force Personnel to Suspend Reserve Duty if Netanyahu's Judicial Coup Continues. On Haaretz: <https://www.haaretz.com/israel-news/2023-07-21/ty-article/over-1-000-israeli-air-force-personnel-to-suspend-reserve-duty-if-judicial-coup-continues/00000189-782c-d09f-a3a9-ffad0a150000>
- Levush, R. (2024). Israel: Legislation Abolishes Reasonableness as a Standard for Judicial Review of Government's Decisions. On: <https://www.loc.gov/item/global-legal-monitor/2023-10-24/israel-legislation-abolishes-reasonableness-as-a-standard-for-judicial-review-of-governments-decisions/>
- Lotha, G. (2024). Six-Day War. On: <https://www.britannica.com/event/Six-Day-War>
- Martha, R.; Bailey, S. (2020). The right to enter his or her own country. On the Blog of the European Journal of International Law: <https://www.ejiltalk.org/the-right-to-enter-his-or-her-own-country/>
- Minority Rights Group. (2020). Israel. <https://minorityrights.org/country/israel/>
- Moore, J.N. (1971). The Arab-Israeli Conflict and the Obligation to Pursue Peaceful Settlement of International Disputes. In *University of Kansas Law Review*, Volume 19(3), p.403-440
- Morris, B. (2001). *Righteous victims: A history of the Zionist-Arab conflict 1881-1998*. Vintage.
- Morris, B. (2008). *1948: A History of the First Arab-Israeli War*. Yale University Press.
- Murray, C.; Gluck, J. (2023). Protecting Human Rights in Constitutions. United Nations Development Programme, p. 7. On: <https://www.undp.org/sites/g/files/zskgke3226/files/2023-10/undp-protecting-human-rights-in-constitutions.pdf>
- Navot, S. (2017). Emergency As a State of Mind - The Case of Israel. In P. Auriel, O. Beaud, Wellman, C. (Eds.), *The Rule of Crisis Terrorism, Emergency Legislation and the Rule of Law*. <https://ssrn.com/abstract=3247520>
- Office of the United Nations High Commissioner for Human Rights. (2023). Right of return of Palestinian refugees must be prioritised over political considerations: UN experts. On: <https://www.ohchr.org/en/statements/2023/06/right-return-palestinian-refugees-must-be-prioritised-over-political>
- Office of the United Nations High Commissioner for Human Rights. (2023). Situation of human rights in the Palestinian territories occupied since 1967. A/78/545
- Office of the United Nations High Commissioner of Human Rights. (2024). International Bill of Human Rights: A brief history, and the two International Covenants. On: <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>

Palestinian Central Bureau of Statistics. (2019). Dr. Awad Presents a Brief on Palestinians at the End of 2019. On PCBS website: <https://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3642>

Pedahzur, A.; Yishai, Y. (1999). Hatred by Hated People: Xenophobia in Israel. In *Studies in Conflict and Terrorism*, Volume 22, p. 101-117. DOI:10.1080/105761099265784

Peleg, I.; Waxman, D. (2011). Introduction: The Other Palestinian Problem. In *Israel's Palestinians: The Conflict Within*, (p. 1-16). Cambridge University Press. <https://doi.org/10.1017/CBO9780511852022.002>

Perez, A. (2023). *Understanding Zionism: History and Perspectives*. Fortress Press.
<https://doi.org/10.2307/j.ctv2xkxf4>

Popp, R. (2006). Stumbling Decidedly into the Six-Day War. In *Middle East Journal*, Volume 60(2), p. 281-309.
<https://www.jstor.org/stable/4330250>

Quigley, J. (1998). Displaced Palestinians and a Right of Return. In *Harvard International Law Journal*, Volume 39(1), p. 171-229.
https://heinonline-org.tilburguniversity.idm.oclc.org/HOL/Page?lname=&public=false&collection=journals&handle=hein.journals/hilj39&men_hide=false&men_tab=toc&kind=&page=171#

Ramcharan, B.G. (1981). Equality and Nondiscrimination. In Henkin, L. (Ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights*, (p. 246-270). Columbia University Press, New York.

Roznai, Y.; Dixon, R.; Landau, D.E. (2023). Judicial Reform or Abusive Constitutionalism in Israel. In *Israel Law Review*, Volume 56(3), p. 292-304. <https://doi.org/10.1017/S0021223723000171>

Rubinstein, A.; Jacobson, A. (2009). *Israel and the Family of Nations: The Jewish Nation-State and Human Rights*. Shoken Publishing House, Tel Aviv.

Shakir et al. (2021). A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution. On HRW:
<https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>

Shemer-Kunz, Y. (2023). Annexation, normalization and the two-state solution in Israel-Palestine. *Frontiers in Political Science*, Volume 5, p. 12. DOI:10.3389/fpos.2023.981237

Sohn, L.B. (1981). The Rights of Minorities. In *The International Bill of Rights: The Covenant on Civil and Political Rights*, p. 270-289. Columbia University Press, New York.

Suleiman, J. (2001). The Palestinian Liberation Organization: From the Right of Return to Bantustan. In N. Aruri (Ed.), *Palestinian Refugees: The Right of Return* (p. 87-102). Pluto Press.
<https://doi.org/10.2307/j.ctt18fs9x9.11>

Summers, K. (2023). What is the “One-State Solution,” and Why is it Unlikely to Work? On:
<https://www.american.edu/sis/news/20231121-what-is-the-one-state-solution-and-why-is-it-unlikely-to-work.cfm>

Tamir, M. (2016) The Freedom to Exclude: The Case of Israeli Society. In *Israel Law Review*, Volume 49(2), p. 237-266. DOI:10.1017/S002122371600008X

The Association for Civil Rights in Israel. (2019). Equality and Anti-Racism. On:
<https://www.english.acri.org.il/equality-and-anti-racism#:~:text=The%20State%20of%20Israel%20is,healthcare%2C%20education%2C%20and%20employment.>

The Martin Luther King, Jr. Research and Education Institute. (2024). Apartheid. On:
<https://kinginstitute.stanford.edu/apartheid>

United Nations Human Rights Council. (2020). Civil Society Welcomes Mounting Recognition of Israel's Commission of the Crime of Apartheid Against Palestinian People. A/HRC/45/NGO/120

United Nations Human Rights Council. (2020). Gaza 2020: Uninhabitable and Unnoticed as Israel's Restrictions Tighten. A/HRC/45/NGO/165

United Nations Human Rights Council. (2021). Silencing Opposition and Shrinking Civil Society Space in Palestinian territories. A/HRC/46/NGO/22

United Nations Human Rights Council. (2021). Gaza's Children Deprived of Their Right to Education. A/HRC/47/NGO/41

United Nations. (2024). Universal Declaration of Human Rights: History of the Declaration. On: <https://www.un.org/en/about-us/udhr/history-of-the-declaration>

United Nations. (2024). Introduction to the Committee: Human Rights Committee. On: <https://www.ohchr.org/en/treaty-bodies/ccpr/introduction-committee>

United Nations. (2024). Status of Ratification: Interactive Dashboard. On: <https://indicators.ohchr.org/>

United Nations. (2024). Optional Protocol to the International Covenant on Civil and Political Rights. On: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&clang=_en

United Nations. (2024). Committee on the Elimination of Racial Discrimination: Introduction. On: <https://www.ohchr.org/en/treaty-bodies/cerd/introduction>

United Nations Committee on the Elimination of Racial Discrimination. (1996). General Recommendation No. 21. On: <https://www.uio.no/studier/emner/jus/humanrights/HUMR5508/v12/undervisningsmateriale/General%20Recommendation%20No21-self-determination.pdf>

United Nations Relief and Works Agency for Palestine Refugees in the Near East. (2013). About UNRWA. https://www.europarl.europa.eu/meetdocs/2014_2019/documents/dplc/dv/about_unrwa-/about_unrwa-en.pdf

Weder, N.; García-Nieto, R.; Canneti-Nisim, D. (2011). Peace, Reconciliation and Tolerance in the Middle East: The Impact of People-to-People Peace Building Initiatives Among Israeli Jews and Palestinians Who Lost a First-Degree Family Member Due to the Conflict: A Pilot Study. In International Journal of Mental Health, Volume 39(4), p. 59-81. <https://doi.org/10.2753/IMH0020-7411390404>

World Justice Project. (2024). What is the Rule of Law? On: <https://worldjusticeproject.org/about-us/overview/what-rule-law>

Zilbershats, Y. (2007). International Law and the Palestinian Right of Return to the State of Israel. In Israel and the Palestinian Refugees, p. 191-218. DOI: [10.1007/978-3-540-68161-8_7](https://doi.org/10.1007/978-3-540-68161-8_7)

Legislation

Balfour, A.J. (1917). The Balfour Declaration. On: https://www.files.ethz.ch/isn/125415/8008_Balfour_Declaration.pdf

Basic Laws of Israel: The Army. (1976)

Basic Laws of Israel: The Judiciary. (1984)

Basic Laws of Israel: The Judiciary (Amendment No. 3). (2023)

Basic Laws of Israel: Human Dignity and Liberty. (1992)

Basic Laws of Israel: Israel - The Nation State of the Jewish People. (2018)

IV Geneva Convention. (1949).

https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf

Human Rights Committee. (1994). General Comment No. 23 (CCPR/C/21/Rev.1/Add.5).

<https://www.refworld.org/legal/general/hrc/1994/en/26900>

Human Rights Committee. (1999). General Comment No. 27 (CCPR/21/Rev.1/Add.9), paragraph 4(20)

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.9&Lang=en

Rome Statute of the International Criminal Court. (1998). <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

The Declaration of the Establishment of the State of Israel. (1948)

United Nations General Assembly resolution 34/180. (1981). Convention on the Elimination of All Forms of Discrimination against Women.

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_34_180.pdf

United Nations General Assembly resolution 47/135. (1992). Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. https://legal.un.org/avl/ha/ga_47-135/ga_47-135.html

United Nations General Assembly resolution 61/106. (2006). Convention on the Rights of Persons with Disabilities. <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

United Nations General Assembly resolution 181 (II). (1947). Partition Plan.

<https://www.inss.org.il/wp-content/uploads/2018/12/All-UN-Resolutions.pdf>

United Nations General Assembly resolution 194 (III). (1948). Palestine - Progress Report of the United Nations Mediator. <https://www.refworld.org/legal/resolution/unga/1948/en/86836>

United Nations General Assembly resolution 2106 (XX). (1965). International Convention on the Elimination of All Forms of Racial Discrimination.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

United Nations General Assembly resolution 2106 (XX). (1965). International Convention on the Elimination of All Forms of Racial Discrimination - Declarations and Reservations.

<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-2.en.pdf>

United Nations General Assembly resolution 2200A (XXI). (1966). International Covenant on Civil and Political Rights.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

United Nations General Assembly resolution 2200A (XXI). (1966). International Covenant on Economic, Social, and Cultural Rights.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

Universal Declaration of Human Rights. (1948).

<https://www.un.org/en/about-us/universal-declaration-of-human-rights>

Case law

Ka'adan v. Israel Land Administration, HCJ 6698/95, 8 March 2000,

<https://versa.cardozo.yu.edu/opinions/ka%E2%80%99adan-v-israel-land-administration>

Movement for Quality Government v. Knesset, HCJ 5658/23, 1 January 2024,
<https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Movement%20for%20Quality%20Government%20v.%20Knesset--%20abstract.pdf>

Nottebohm Case (Liechtenstein v. Guatemala), Second Phase, Judgement, ICJ. (1955).
<https://www.refworld.org/jurisprudence/caselaw/icj/1955/en/97455>

Stewart v. Canada, CCPR/C/58/D/538/1993, UN Human Rights Committee (HRC), 1 November 1996,
<https://www.refworld.org/jurisprudence/caselaw/hrc/1996/en/113304>

Warsame v. Canada, CCPR/C/102/D/1959/2010, UN Human Rights Committee (HRC), 21 July 2011,
<https://juris.ohchr.org/casedetails/1639/en-US>