

AMNESTY INTERNATIONAL

MEMORANDUM CONCERNING THE PROPOSED

“PREVENTION OF INFILTRATION LAW – 2008”

20 June 2008

Amnesty International is concerned that the draft Prevention of Infiltration Law – 2008 contains provisions which are inconsistent with international human rights treaties to which Israel is a State Party, notably the obligation of non-refoulement found in the Convention relating to the Status of Refugees (Refugee Convention), as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Civil and Political Rights (ICCPR).

The proposed criminalization of irregular entry, without taking into account the reasons for entry or the risk of removal, severely restricts the ability of individuals coming into Israel irregularly from seeking asylum and potentially criminalizes those who seek protection from persecution. The draft law also fails to protect the right of non-refoulement, as required under international treaties to which Israel is a State Party. The draft law has the potential to deny foreign nationals fleeing persecution the right to seek asylum, as well as to deny all nationals arriving irregularly the chance to challenge their removal individually, in order to assess the potential risk of returning them across the border. All of these concerns, combined with the broad power that the draft law would provide to detain and deport individuals crossing the border irregularly, without adequate procedural guarantees, would give rise to serious violations of multiple provisions of international human rights and refugee law, as well as Israel's treaty obligations to uphold those laws.

Amnesty International recognizes that it is the sovereign prerogative of states to regulate the entry and presence of foreign nationals in their territory. However, this power is not unlimited and immigration or national security laws and procedures must comply with states' international human rights obligations, including ensuring the protection of all individuals within their jurisdiction, regardless of their immigration status, and ensuring that individuals are not returned to states where they would be at risk of serious human rights abuses.

CRIMINALIZATION OF IRREGULAR ENTRY

The proposed law would criminalize persons entering Israel without authorization, whether through unauthorized points of entry or using counterfeit documents, regardless of their reasons for entering the country. It would impose prison sentences of seven years for residents and citizens of ten listed states or territories, including refugee-producing countries such as Sudan and Iraq,¹ and five years for all others. The draft law makes no provisions for persons fleeing from violence or persecution, including those coming from the ten listed countries.

International human rights bodies, as well as UN human rights experts, have repeatedly stressed that in exercising their sovereign powers to control entry, states should not criminalize irregular entry.

The Refugee Convention, to which Israel is a State Party, prohibits the imposition of penalties for illegal entry or presence, where a person has fled a territory because of a risk to their life or freedom. Article 31(1) provides that States “shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization,

¹ The countries currently listed in the Supplement are Iran, Afghanistan, Lebanon, Libya, Sudan, Iraq, Pakistan, Syria, Yemen, and the Territory of the Gaza Strip.

provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”²

The Executive Committee of the United Nations High Commissioner for Refugees (ExCom or the Executive Committee), a body of 76 countries of which Israel is a member and which adopts conclusions on the international protection of refugees under the Refugee Convention, concluded that where refugees and asylum seekers move from one country to another, they may only be returned if they are protected against refoulement, and are afforded basic human rights until a durable solution is found.³ ExCom further called on states to treat favourably those cases where a refugee or asylum seeker “may justifiably claim that he has reason to fear persecution or that his physical safety or freedom are endangered in a country where he previously found protection”,⁴ and recognize that there are circumstances where a refugee or asylum seeker may be compelled to use fraudulent documentation to leave a country where their safety or freedom are at risk.⁵

The Working Group on Arbitrary Detention holds the view that criminalizing irregular entry into a country exceeds the legitimate interests of states to control and regulate irregular immigration and can lead to unnecessary detention.⁶ In his February 2008 report, the Special Rapporteur on the human rights of migrants urged against criminalizing irregular entry, explaining that the irregular status of an individual cannot be used by states to sidestep their obligations to ensure due process guarantees and protect all individuals against arbitrary arrest and detention.⁷ The Special Rapporteur encouraged states “to view irregular migration as an administrative offence, reversing the trend toward greater criminalization”, underlining that “[a]t the core of immigration policies should be the protection of migrants, regardless of their status or mode of entry.”⁸

Amnesty International is concerned that the proposed Prevention of Infiltration Law – 2008, and in particular the possibility of heavy criminal penalties for irregular entry against migrants who pose no security threat, appears to be an excessively severe immigration control measure. Detaining asylum seekers or otherwise restricting their freedom of movement without appropriate justification could be considered arbitrary detention, and would violate Israel’s obligations under the Refugee Convention.

² The UNHCR *Handbook on Procedures and Criteria for determining Refugee Status* makes clear that the phrase “coming directly from” includes transit countries where the person’s safety could not be assured, or where they were unable to claim refugee protection. See, UNHCR *Handbook on Procedures and Criteria for determining Refugee Status* [Emphasis added]:

The expression ‘coming directly’ in Article 31(1), covers the situation of a person who enters the country in which asylum is sought directly from the country of origin, or from another country where his protection, safety and security could not be assured. It is understood that this term also covers a person who transits an intermediate country for a short period of time without having applied for, or received, asylum there. No strict time limit can be applied to the concept ‘coming directly’ and each case must be judged on its merits.

³ UNHCR ExCom Conclusion No. 58 (XL) – 1989, Problem of refugees and asylum-seekers who move in an irregular manner from a country in which they had already found protection, paragraph (f).

⁴ UNHCR ExCom Conclusion No. 58 (XL) – 1989, Problem of refugees and asylum-seekers who move in an irregular manner from a country in which they had already found protection, paragraph (g).

⁵ UNHCR ExCom Conclusion No. 58 (XL) – 1989, Problem of refugees and asylum-seekers who move in an irregular manner from a country in which they had already found protection. Paragraph (l). See also, UNHCR ExCom Conclusion No. 15 (XXX) -1979 Refugees without an Asylum Country, paragraph (k):

Where a refugee who has already been granted asylum in one country requests asylum in another country on the ground that he has compelling reasons for leaving his present asylum country due to fear of persecution or because his physical safety or freedom are endangered, the authorities of the second country should give favourable consideration to his asylum request...

⁶ See, Report of the Working Group on Arbitrary Detention, E/CN.4/1999/63 of 18 December 1998.

⁷ Report of the Special Rapporteur of the Human Rights Council on the Human Rights of Migrants, A/HRC/7/12, paragraph 43.

⁸ Report of the Special Rapporteur of the Human Rights Council on the Human Rights of Migrants, A/HRC/7/12 of 25 February 2008, paragraph 60.

PRESUMPTION OF DETENTION

Rather than ensuring that detention is justified in individual circumstances, the draft law favours the automatic detention of non-nationals who enter Israel irregularly. Article 8 of the draft law calls for the automatic detention of a person who has crossed irregularly, until their deportation from Israel. The Explanatory Notes make explicit that release on bail will be exceptional, and explains that the policy of automatic detention is based on the presumed security risk posed by persons entering Israel irregularly. Further, Article 15 allows state authorities to hold a detainee without bail, if an opinion has been filed by security authorities that the detainee's country of origin or area of residence is engaged in activities which endanger Israel. The proposed law thus justifies detaining individuals without an individualized assessment of the risk that they may or may not pose.

Article 9 of the ICCPR recognizes that everyone has the right to liberty and security, and prohibits arbitrary detention. Where detention of non-citizens without regular status is automatic, the UN Human Rights Committee, a treaty body which monitors states' compliance with their obligations under the ICCPR, has found the detention to be disproportionate and contrary to article 9 of the Covenant. Without individualized factors, such as absconding or lack of cooperation, the Human Rights Committee has found that the automatic detention of unlawful non-citizens was unjustified.⁹

Continued detention must be justified by state authorities on the basis that it is necessary to ensure that the person would not flee, harm society, or destroy evidence.¹⁰ The Human Rights Committee has underlined that, "the fact of illegal entry may indicate a need for investigation and there may be other factors particular to the individual ... which may justify detention for a period. Without such factors detention may be considered arbitrary, even if entry was illegal..."¹¹

Recalling Article 31 of the Refugee Convention, the Executive Committee has stated that as a general principle detention of refugees and asylum seekers should normally be avoided.¹² ExCom Conclusion No. 44 recognizes four exceptions where the detention of asylum-seekers may be justified: (i) to verify identity; (ii) to determine the basis of a refugee claim, although this cannot be used to justify detention for the whole determination procedure or for an unlimited period of time; (iii) when an individual has destroyed or presented false documents in order to mislead immigration authorities, although it cannot justify detention where individuals are unable to obtain documentation; and (iv) to protect national security and public order, based on evidence that the individual has criminal precedents or affiliations which are likely to pose a risk to public order or national security such that would justify detention.¹³

According to the Executive Committee, detention of asylum-seekers for other purposes, such as deterrence of future claims, or in an attempt to dissuade applicants from pursuing their refugee claims, violates international protection standards. Specifically, the Executive Committee has stated that detention "should not be used as a punitive or disciplinary measure for illegal entry or presence in the country," and "should also be avoided for failure to comply with the administrative requirements or other institutional restrictions".¹⁴ The Guidelines of the UN High Commissioner

⁹ Human Rights Committee, *A v Australia*, Communication No. 560/1993. See also, Human Rights Committee, *C v Australia*, Communication No 900/199, *Baban v Australia*, Communication No 1014/2001, Communication No. *Bakhtiyari v Australia*.

¹⁰ Human Rights Committee, *A v. Australia*, Communication No. 560/1993, paragraph 5.8.

¹¹ Human Rights Committee, *A v. Australia*, Communication No. 560/1993, paragraph 9.4.

¹² UNHCR ExCom Conclusion 44 (XXXVII) "Detention of Refugees and Asylum-Seekers," United Nations High Commissioner for Refugees, 37th Session, 1986, paragraph (b).

¹³ UNHCR ExCom Conclusion No. 44, *Detention of Refugee and Asylum-Seekers*, United Nations High Commissioner for Refugees, 37th Session, 1986.

¹⁴ UNHCR Guidelines on Detention, referencing Sub Committee of the Whole of International Protection Note EC/SCP/44 Paragraph 51 (c). Also, the UNHCR Revised Guidelines on Detention recommends using alternatives to detention when dealing with asylum-seekers such as monitoring requirements, provisions of a guarantor or surety, release on bail, or the use of open centers.

for Refugees (UNHCR) state that detaining asylum seekers is “inherently undesirable” and should be practiced only where strictly necessary.¹⁵

The policy of automatic detention for irregular migrants crossing into Israel proposed in the draft law does not meet the minimum requirements set out by numerous international human rights treaty bodies, including the Executive Committee of the UN High Commissioner for Refugees, that detention be used as an exceptional measure and must be justified on the basis of individual circumstances, while generally being avoided for asylum seekers and refugees.

LACK OF PROCEDURAL GUARANTEES

The draft law fails to provide adequate procedural guarantees to detainees facing deportation. The draft law allows for a summary removal process without giving the individual an adequate opportunity to challenge their deportation, and fails to provide sufficient guarantees for access to legal counsel, where a detainee cannot afford legal representation.

The proposed summary removal process set out in the draft law does not contain sufficient procedural guarantees to ensure that any removal is effected only after an individualized risk assessment is completed, taking into account the potential risk of return.

Article 5 of the ICERD requires States parties to prohibit and eliminate discrimination based on national or ethnic origin in order to ensure the protection of all rights under the Covenant. Interpreting the obligations of states under the ICERD, the Committee on the Elimination of Racial Discrimination has elaborated a minimum set of guarantees for the expulsion of all non-citizens, regardless of their regular or irregular status. In particular, the Committee has called on states to ensure “that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies”.¹⁶

State parties must ensure that non-citizens are not removed where there are insufficient guarantees that their personal circumstances, and in particular the risk of torture or other ill-treatment, have been taken into account.¹⁷ In particular, the Committee reminded states of their obligations not to return or remove anyone to a country or territory where they would be at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment.

As a party to the ICERD, among other international conventions, Israel has an obligation to ensure that foreign nationals are not returned without an individualized assessment of risk, and in particular are never returned to countries where they are at risk of serious human rights abuses, including torture and other forms of ill-treatment.

The limited provisions for access to counsel further limit the due process rights of detainees under the proposed law. Article 26 of the proposed law provides that a person subject to detention under the proposed law may be represented free of charge by a representative who is *not* a lawyer before the Detention Review Tribunal.

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), adopted by the General assembly in 1988, recognizes the right of all detainees to legal counsel. Principle 17 recognizes that states must ensure that a detainee is provided with reasonable facilities to exercise their right to counsel, and further that

¹⁵ UNHCR, ExCom Conclusion No. 44 (1986). See also UNHCR Revised Guidelines on Applicable Criteria and Standards Relating To The Detention Of Asylum Seekers, (February 1999), Guideline 3.

¹⁶ Committee on the Elimination of Racial Discrimination, General Recommendation No. 30 on Discrimination against Non-Citizens (2004), paragraph 25.

¹⁷ Committee on the Elimination of Racial Discrimination, General Recommendation No. 30 on Discrimination against Non-Citizens (2004), paragraph 26.

where necessary to protect the interests of justice, free assistance to a lawyer be available where the detainee does not have sufficient means to pay.¹⁸

Access to counsel is imperative to safeguard equality of arms, and ensure that detainees, in particular individuals from vulnerable groups such as members of minorities, women, children, refugees and asylum seekers, are able to effectively defend themselves and/or challenge their detention under the law. There is a pressing need to ensure that access to counsel is facilitated in deportation proceedings, where a detainee is facing death, torture or ill-treatment if returned.

The lack of procedural guarantees, including lack of guaranteed access to counsel, severely restricts the ability of detainees to seek judicial remedies against their removal. Moreover, the summary removal process, discussed below, raises serious concerns that border authorities will not adequately take into account a person's reasons for entering Israel, nor adequately investigate the potential risk of serious human rights violations faced by the detainee if they are returned.

ACCESS TO REFUGEE PROTECTION AND NON-REFOULEMENT

The proposed summary removal process, especially the high level of discretion given to officers to remove individuals within 72 hours, will severely restrict the ability of a detainee to challenge their expulsion, and will also effectively remove the ability of individuals to seek international protection in Israel.

The proposed law seriously undermines Israel's obligations under the Refugee Convention, as well as the ICCPR and CAT, to respect the principle of non-refoulement: not to return individuals to a situation where they would be at risk of human rights abuses, including death, torture or other ill treatment. Included in this is the principle of non-rejection at the frontier – the obligation on states to permit entry to people seeking international protection to assess whether they would face serious human rights abuses if returned. While the Explanatory Notes briefly mention the government's obligation to respect the principle of non-refoulement, the text of the proposed law does not make any explicit mention of the principle nor how this obligation would be fulfilled.

According to the Human Rights Committee, the ICCPR “entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable damage, ... either in the country to which removal is to be effected or in any country to which the person may be subsequently removed”.¹⁹ The Committee on the Elimination of Racial Discrimination has further affirmed the prohibition against refoulement in its General Recommendation on discrimination against non-citizens, reinforcing that foreigners should not be returned to a country where they are at risk of serious human rights abuses.²⁰

Israel has a positive obligation under international law to ensure that asylum seekers are not returned to countries where they would be at risk of serious human rights violations, including torture, ill-treatment, and other forms of persecution, whether directly as a result of the return, or indirectly on the basis of their likely further removal or deportation.²¹ These obligations are found

¹⁸ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), Principle 17:

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.
2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

¹⁹ Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, paragraph 12.

²⁰ Committee on the Elimination of Racial Discrimination, General Recommendation No. 30 on Discrimination against Non-Citizens (2004), paragraph 27.

²¹ Human Rights Committee, General Comment No 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), paragraph 9.

in Article 33 of the Refugee Convention, and in numerous other treaties to which Israel is a party, such as Article 7 of the ICCPR,²² and Article 3 of the CAT.²³

Access to another state to seek protection is a cornerstone of the international refugee protection regime. It is based on the right to seek asylum, recognized in the Universal Declaration of Human Rights, as well as the principle of non-refoulement recognized in the Refugee Convention, which includes non-rejection at the border.²⁴ It has also been underlined by several UN experts and treaty bodies, such as the UN Special Rapporteur on human rights in countering terrorism,²⁵ as well as forming part of UNHCR's Executive Committee's Conclusions.²⁶

The proposed law fails to take into account the serious risk that asylum seekers and refugees returned from Israel to Egypt face the prospect of incommunicado detention and forcible return to their countries of origin. The treatment of asylum seekers and refugees in Egypt, and in particular the risk of forcible return and ill-treatment, has been documented recently by Amnesty International and other organizations, and continues to raise serious concern.

Amnesty International continues to receive reports of the ill-treatment or forcible return of refugees and asylum seekers from Egypt. In June 2008 the Egyptian authorities forcibly returned up to 1,000 asylum seekers to Eritrea, despite guidelines issued by the UNHCR opposing the return of rejected Eritrean asylum-seekers on the grounds of the record of serious human rights violations in Eritrea, and further deportation are expected at the time of writing. Those deported were not given access to the UN High Commissioner for Refugees (UNHCR) in Egypt to assess their protection needs. In August 2007, 48 nationals of African countries, most of them Sudanese, were forcibly returned to Egypt by Israeli forces shortly after they had crossed from Egypt into Israel through the Sinai border. They were detained incommunicado for months in Egypt and some 20 of them were forcibly returned to Sudan, including seven or eight who had refugee status in Egypt. The fate and whereabouts of the 28 others remain unknown. Since January 2008, some 14 nationals of African countries, including potential asylum seekers from Sudan and Eritrea were reportedly shot dead by Egyptian border forces while attempting to cross from Egypt into Israel via the Sinai border. Those reportedly killed while trying to cross into Israel include two men believed to be from Côte d'Ivoire, a Sudanese man and an Eritrean woman who were shot dead by Egyptian security forces in March 2008,²⁷ and six African migrants, some of them from Sudan, were shot dead in similar circumstances in February 2008.

²² ICCPR, Article 7 reads:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

²³ While Article 33(2) of the Refugee Convention contains a limited possibility for exception on the basis of serious security concerns of the asylum State, article 3 of the CAT is unconditional.

CAT, Article 3 states:

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

²⁴ See article 33 of the Refugee Convention, in relation to refugees unlawfully in the country of refuge.

²⁵ Special Rapporteur on human rights in countering terrorism, A/62/263 of 15 August 2007, paragraph 36.

²⁶ See, UNHCR ExCom Conclusion on International Protection Nos. 6 (XXVIII), 85 (XLIX) and 99 (LV) which reaffirm the fundamental importance of the observance of the principle of non-refoulement, both at the border and within the territory of a State, of persons who may be subjected to persecution if returned to their country of origin irrespective of whether or not they have been formally recognized as refugees, and stressed that the principle of non-refoulement and non-rejection at the frontier requires access to fair and efficient procedures for determining status and protection needs.

²⁷ Amnesty International, Two more migrants killed at Egypt/Israel border (News, 28 March 2008)

<http://www.amnesty.org/en/news-and-updates/news/two-more-migrants-killed-egypt-israel-border-20080328>

PROTECTING HUMAN RIGHTS AND NATIONAL SECURITY

Recognizing Israel's genuine and legitimate right, as well as its obligation, to take measures to ensure the security of the state and its citizens, Amnesty International is concerned that the excessively punitive penal and administrative measures proposed in the draft law are based largely on a presumed national security risk posed by irregular migrants entering Israel, as stated in the Explanatory Notes, and fail to take into account the vulnerable situation of migrants, refugees and asylum seekers.²⁸

The draft law also singles out for particularly harsh penalty individuals from a list of countries, some of which, such as Iraq and Sudan, generate large numbers of refugees and asylum seekers, who are fleeing persecution, torture or other ill treatment and serious human rights violations, and who under the draft law may now face detention and summary removal. Israel has undertaken to ensure freedom from discrimination in several international human rights treaties, recognized in Articles 2 and 26 of the ICCPR, Article 1 of the ICERD, and Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Committee on the Elimination of Racial Discrimination has called on states to ensure that any laws concerning deportation or measures taken in the name of national security do not discriminate against non-citizens on the basis of their national origin.²⁹

Regardless of the legal status of the individual migrant, it remains the responsibility of the state to ensure that fundamental human rights norms are adhered to and that all migrants are treated with dignity.³⁰ The Human Rights Committee has long noted that states must take into account that the rights in the ICCPR are ensured to "all individuals within its territory and subject to its jurisdiction."³¹ This was confirmed again recently by the Human Rights Committee in its General Comment on the nature of the general legal obligations of States under the Covenant, explicitly stating, "the enjoyment of Covenant rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum-seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State party."³²

Interpreting state obligations under the ICERD, the Committee on the Elimination of Racial Discrimination has repeatedly affirmed the obligations of states to ensure the human rights of all persons under their jurisdiction, without discrimination, and further called on states to:³³

²⁸ See, e.g. Explanatory Notes to Article 20.

²⁹ Committee on the Elimination of Racial Discrimination, General Recommendation No. 30 on Discrimination against Non-Citizens (2004), paragraphs 25, 10.

³⁰ See, Report of the Special Rapporteur of human rights of migrants, A/HRC/7/12, paragraph 14; Human Rights Committee, General Comment No. 15: The Position of aliens under the Covenant, paragraph 1.

³¹ Human Rights Committee, General Comment No. 15: The Position of aliens under the Covenant, paragraph 1.

³² Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, paragraphs 3, 10:

3. Article 2 defines the scope of the legal obligations undertaken by States parties to the Covenant. A general obligation is imposed on States parties to respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction (see paragraph 9 and 10 below). ...

10. States parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party. As indicated in general comment No. 15 adopted at the twenty-seventh session (1986), the enjoyment of Covenant rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum-seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State party. This principle also applies to those within the power or effective control of the forces of a State party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State party assigned to an international peacekeeping or peace-enforcement operation.

³³ Committee on the Elimination of Racial Discrimination, General Recommendation No.30: Discrimination Against Non Citizens, paragraphs 9, 19, 20.

9. Ensure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin;...

19. Ensure the security of non-citizens, in particular with regard to arbitrary detention, as well as ensure that conditions in centres for refugees and asylum-seekers meet international standards

20. Ensure that non-citizens detained or arrested in the fight against terrorism are properly protected by domestic law that complies with international human rights, refugee and humanitarian law;

In explaining state obligations under Article 13 of the ICCPR, the Human Rights Committee has recognized the obligation of states to ensure – even where deportations are based on legitimate national security concerns – that individuals are able to challenge such deportations before an independent and impartial body, as an inherent part of article 7 of the Covenant.³⁴

On the basis of Articles 7 and 13 of the ICCPR, as well as the views of the Human Rights Committee, the Special Rapporteur on the promotion and protection of human rights while countering terrorism strongly advised “against the use of accelerated procedures in asylum cases and deportation procedures if such procedures do not include an effective, independent and impartial remedy operative before the execution of a removal decision.”³⁵ The Special Rapporteur went on to call on states, in line with their international treaty obligations:

(a) To ensure that their legislation on immigration detention contains clear, transparent rules that take into account the requirements of necessity, proportionality, non-arbitrariness and non-discrimination, as required by refugee and human rights law;

(b) Not to depart from the right to judicial review of the lawfulness of any form of detention which, according to the Human Rights Committee, is not subject to derogation even at times of a public emergency and, given the vulnerable situation of detained immigrants, to ensure that judicial review of any form of immigration detention is made automatic (mandatory) within a reasonable time, such as 48 hours;

(c) To ensure the right to effective access to legal counsel from the moment of detention, including by those detained on grounds of immigration law;

(d) To set up independent oversight mechanisms for the monitoring of the detention of immigrants and to ensure access by UNHCR or its designated partners to detention facilities;³⁶

CONCLUSION

Amnesty International is concerned that the draft law, if implemented in its present form, could effectively side step Israel’s obligations to ensure that fundamental human rights, and in particular the human rights of refugees and asylum seekers, are respected while enacting and implementing national immigration or security laws.

Israel must ensure that any immigration or national security measures fully respect its international human rights obligations, including ensuring the protection of all individuals within its

³⁴ Human Rights Committee, *Ahani v. Canada*, communication No. 1051/2002, paragraphs 10.6-10.8. Affirmed in Human Rights Committee, *Alzery v. Sweden*, communication No. 1416/2005, paragraph 11.8:

... the Committee notes that article 2 of the Covenant, read in conjunction with article 7, requires an effective remedy for violations of the latter provision. By the nature of refoulement, effective review of a decision to expel to an arguable risk of torture must have an opportunity to take place prior to expulsion, in order to avoid irreparable harm to the individual and rendering the review otiose and devoid of meaning.

³⁵ Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/62/263 of 15 August 2007, paragraph 53.

³⁶ Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/62/263 of 15 August 2007, paragraph 81 [Emphasis added].

jurisdiction, regardless of their immigration status, and based on principles of refugee and human rights law, which oblige states to ensure that individuals are not returned to states where they may be at risk of serious human rights abuses.

In light of the above, Amnesty International is urging Israeli legislators not to support this proposed law and, further, to take the steps necessary to amend the law currently in force, in order to bring it into conformity with international human rights standards.