

The Association for Civil Rights in Israel • Amnesty International • ASSAF - Aid to Refugees and Asylum Seekers • Hotline For Migrant Workers • African Refugee Development Center • Israel Religious Action Center - Israel Movement for Progressive Judaism • Kav LaOved (Worker's Hotline) • Physicians for Human Rights

The Infiltration Prevention Bill Lies and Reality

The Infiltration Prevention Law, which will first be deliberated by the Knesset's Internal Affairs Committee on February 3, 2010, is one of the most dangerous bills ever presented in the Knesset. If the law is passed, the State of Israel's obligations to the United Nations Convention Relating to the Status of Refugees will be annulled,¹ refugees who never committed a crime could be jailed for up to twenty years, refugees could be deported to their home countries in a manner that could endanger their lives, and the deeds carried out by aid organization employees and volunteers could become criminal. This report will detail the main components of the bill, and will refute many lies that serve as its premise.

A. The Infiltration Prevention Bill

Background:

The Infiltration Prevention Bill² is a government bill being advanced by the Defense Ministry. It is a proposal aimed at replacing the Infiltration Prevention Law from 1954, which was legislated at the time to create a criminal framework for the "fedayeen" phenomenon. Representing the government, Deputy Defense Minister MK Matan Vilnai presented the Infiltration Prevention Bill to the Knesset plenum in May 2008. The bill passed in its first reading by a majority of 21-1. MKs supporting the bill represent numerous parties spanning the political spectrum. The bill was not debated by the Seventeenth Knesset. In June 2009, after the new government was sworn in, a rule of continuity was applied to the bill so that it could be deliberated in the Eighteenth Knesset. 59 MKs voted in favor of doing so, and essentially voted in favor of the bill, while one voted against. Afterward, numerous MKs said that they had erred when voting in favor of the law. They claimed that they due to its convoluted terminology, they did not understand that the law pertained to refugees and those assisting them.³ On February 3, 2010, the bill will be deliberated by the Knesset's Internal Affairs Committee, headed by MK David Azoulay.

¹ United Nations Convention Relating to the Status of Refugees, 1951.

² Infiltration Prevention Bill 5768 – 2008.

³ Lee, Vered. "How did I vote?" *Haaretz*, July 7, 2009.

Main Aspects of the Bill

- Every “infiltrator” may be imprisoned for up to five years (Article 2)
- An “infiltrator” who is a citizen of an enemy country (including residents of Darfur, which is in Sudan) may be imprisoned for up to seven years (Article 3)
- An “infiltrator” carrying a weapon, including a knife, may be jailed for up to 20 years (Article 4)
- Anyone assisting those who violated the Infiltration Prevention Law in order to ease their stay in Israel may face the same penalties as those who broke the law (Article 5)
- Officers along the border may deport “infiltrators” back to Egypt, without giving them the opportunity to file for asylum (Article 11)
- An “infiltrator” will be detained for an unlimited period of time, even if there is no practical possibility of deporting him or her from Israel. “Infiltrators” may not be released from detention if any hostile activity takes place in his or her country or place of residence (Darfur, for example) (Article 15)
- An “infiltrator” may be detained for up to two weeks before being brought to court (Article 20)

If the Bill is Passed:

- Israel will shake off all its obligations based on the UN Refugee Convention, a convention that Israel initiated and helped formulate in 1951, as a lesson of the Holocaust.
- The immediate deportation of anyone who enters Israel illegally, including refugees of genocide and their children, will be authorized..
- All refugees from Sudan (including those from Darfur) may be imprisoned for at least seven years, because they are citizens of an “enemy country.”
- Assisting refugees will become a criminal activity. Any activity that assists the “infiltrator” - including medical and legal assistance, housing, giving food or a glass of water – could become a criminal act punishable by a prison sentence.
- Refugees could be subject to arbitrary and extended administrative detention, without the appropriate judicial proceedings or judicial review.
- Children could be detained for an unlimited period of time. The law makes no mention of this group being particularly vulnerable.

B. Refugees in Israel – Background

Some 18,905 asylum seekers had entered Israel, via the Egyptian border, by September 2009. According to estimates, there are 19,000-20,000 asylum seekers in the country at present, most of whom (some 85%) are from Sudan and Eritrea.

Eritrea is a dictatorship that routinely violates human rights. Some 50% of asylum seekers in Israel are Eritrean. According to a report compiled by Israel's Justice Ministry, there is widespread violation of human and political rights in Eritrea, which includes the incarceration of prisoners of conscience without trial, religious persecution, the “disappearance” of civilians, etc.⁴

⁴ Internal Justice Ministry report, Consultation and Legislation Division, Human Trafficking. October 7, 2009.

Refugees from **Sudan** come from two main conflict zones: Darfur and South Sudan. Some 35% of asylum seekers in Israel are from Sudan. Genocide has been committed against the African residents of Darfur, in western Sudan, by the Arab government and armed militias since 2003. The genocide in Darfur has been regarded as the worst humanitarian crisis in the world at present. Civil war has raged in South Sudan for forty years, as the Arab government tries to oppress the African residents. An international attempt to establish a cease-fire and create an autonomous region in the south has not yet been successful.

C. Lies and Reality

1. Lie: “They aren't refugees. They are labor infiltrators.”

“In our examinations, I would say that 99.9% of them are here for work. They're not asylum seekers, they are not at any risk,” Yaakov Ganot, former head of Immigration Authority, *Haaretz*, June 21, 2009.

The prime minister, various ministers, government clerks and enforcement officials keep repeating the mantra that asylum seekers who enter Israel from Egypt are migrant workers, not refugees. All of them. These are “facts” relayed to the media and the public. The Israeli government says something different to the United Nations.

Reality: Israel admits that 90.4% of asylum seekers are indeed refugees.

Every year, the United Nations High Commissioner for Refugees publishes [statistical reports](#). The data in these reports is not based on UN figures, but rather on **information that government authorities relayed to the UN**. A clear picture emerges from the UN report: Israel is speaking in two voices. The government is lying to the Israeli public and telling the international community the truth. The UN report explicitly states that based on data provided by the Israeli government, as of early 2009, **90.4% of Eritrean and Sudanese asylum seekers in Israel are refugees.**⁵

2. Lie: “Based on our examinations, they are not refugees”

The Israeli government tells the public and the international community that it is reviewing asylum requests based on its international obligations and in accordance with accepted procedures, and that most of those requesting asylum are ineligible for refugee status.

Reality: Intentionally, Israel does not check 90% of asylum requests, yet still claims that “They are not refugees.”

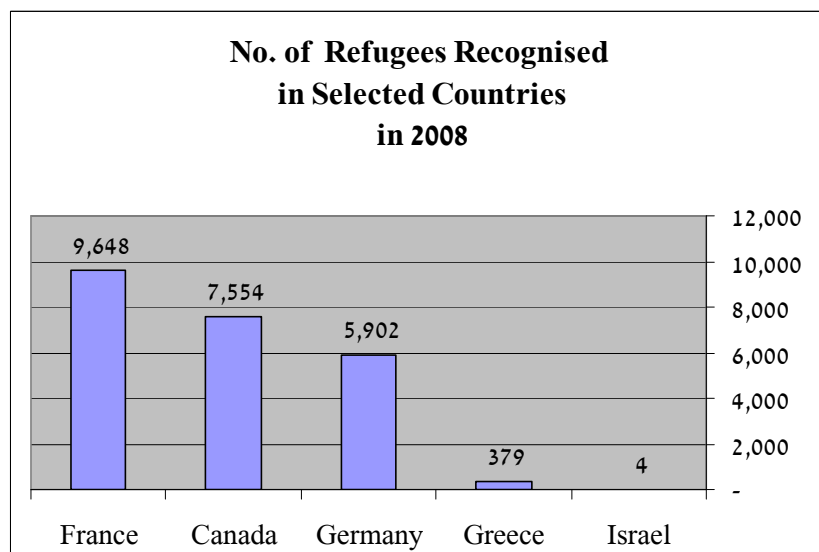
As noted previously, most of the asylum seekers originate from Eritrea and Sudan. Refugees from these two countries are granted asylum and protection around the world. According to a UNHCR report, 96% of asylum requests filed by Eritreans around the world in 2008 were granted. Sudanese refugees have been absorbed in many Western nations, including the United States. Sudan's president has been charged with genocide by the International Criminal Court's chief prosecutor, and the genocide in Darfur has been regarded as the worst current humanitarian crisis in the world.

⁵ UNHCR 2008 Report, Table 10.

So why doesn't Israel recognize them as refugees in Israel? It's very simple – Israel refuses to review their asylum requests, knowing that these are recognized refugee populations. Following UN directives, Israel does not deport refugees from Eritrea, and does not deport asylum seekers from Sudan. Instead, they are granted collective “temporary protection” - an unstable status without any real rights – that protects them from deportation, and refuses to conduct individual examinations of asylum requests, which would allow it to recognize asylum seekers as refugees. Over the years, other groups have been granted “collective protection,” and whoever is part of that group has not had their asylum request reviewed and has not been added to the State of Israel's list of recognized refugees (this policy was in place with refugees from Congo, Liberia and Ivory Coast). By practicing this policy, Israel does not review asylum requests and claims that “there are no refugees in Israel,” simply because only few have been allowed to enter the asylum system.

At present, only requests submitted by individuals who are not from Sudan or Eritrea – a low percentage of the entire number of asylum seekers – are reviewed. Their requests are generally rejected. Since the establishment of the State of Israel, only 190 asylum seekers have been recognized as refugees. According to a UN report, in 2008, only three asylum requests were approved, with an additional one approved after its rejected was appealed. This figure makes Israel the stingiest country in the West in granting refugee status.

See how Israel compares to other countries:



3. Lie: The State of Israel protects refugees.

“Israel will remain open to war refugees,” Prime Minister Benjamin Netanyahu, *Ynet*, January 21, 2010

Prime Minister Benjamin Netanyahu claims that Israel is fighting illegal migration rather than refugees. Refugees are given protection in Israel in accordance with all international obligations. As a nation of refugees, Israel is committed to the welfare of other refugees and will not abandon them.

Reality: The State of Israel deports refugees in accordance with the “Hot Return” policy, which lead to the disappearance, and possible the deaths, of many refugees.

The Infiltration Prevention Bill seeks to formalize the “Hot Return” procedure, which lets soldiers deport asylum seekers to Egypt. Egypt also disregards international law and deports the asylum seekers back to their home countries. The person who determines whether the asylum seeker is a refugee or can be deported is the soldier, who has not been trained to do so. Deportation is carried out even though an asylum request has not been reviewed, and the asylum seekers have not been able to access aid organizations or the court.

The results of this disastrous policy are already known. In August 2007, 48 refugees from Darfur, including 18 children, were deported upon entering Israel. These refugees were detained by the Egyptian authorities and UNHCR was not permitted to meet with them. According to reports, some of them were deported to Sudan and the others disappeared. Hundreds of other asylum seekers that Israel deported since July 2008 and continues to deport, in accordance with the “Hot Return” policy, have met the same fate. According to the last Human Rights Report issued by the U.S. State Department, and according to Amnesty International and Human Rights Watch reports, some of the asylum seekers deported from Israel were returned to their home countries: Sudan, Eritrea and Somalia, a clear violation of the principle of non-refoulement, which bars the return of refugees to places where their lives or freedoms could be threatened.

4. Lie: Even if the Infiltration Prevention Bill is passed, it will not impact Israel's international obligations according to the Refugee Convention.

Israel claims that the Infiltration Prevention Bill will not affect its obligations according to the Refugee Convention.

Reality: Israel does not recognize its obligations to refugees, and the Infiltration Prevention Bill contradicts many articles in the Refugee Convention.

The State of Israel does not uphold its obligations according to the Refugee Convention. Israel refuses to review the asylum requests of most refugees, and does not hesitate to assert that they are not refugees, but “infiltrators.” Based on Israel inconsistent logic, because these asylum seekers - whose requests it refuses to review, in violation of its international obligations – are not refugees, Israel is not violating its international obligations.

Even if Israel was fulfilling its international obligations (which it is not), the Infiltration Prevention Bill violates the UN Refugee Convention. It violates a number a number of basic principles, including the ban on deporting refugees to their home countries (the non-refoulement principle), the ban on discriminating against an asylum seeker based on his or her nationality, the obligation to provide free access to the judicial system and legal assistance, the obligation to review refugee requests, the ban on restricting the movement of refugees, the obligation to provide access to employment and the ban on incarcerating refugees, except as a last resort, etc.

5. Lie: The Infiltration Prevention Bill is the only way to ensure the arrest of criminal or security threats.

The claim: If the law isn't passed, Israel will not have a deterrent legal framework to deal with the individual security threats that reach the border. Those wishing to harm Israel will use the country's democratic legal system and the principle of freedom inherent in it, to attack Israel.

Reality: The Entrance to Israel Law addresses these threats. It permits detaining and bars the release of individuals threatening the security of the State of Israel or its citizens.

At present, the 1952 Entrance to Israel Law provides all of the tools necessary to deal with individual security threats, as it clearly stipulates that a person who seems to pose a threat to the State of Israel's security or the the public's health or well-being may not be released (Article 13(b)).

It should be noted that the proposal to formalize the “Hot Reutrn” policy indicates that the law's objectives do not relate to security. The State of Israel detains individuals that threaten its security and is not quick to deport them.

6. Lie: The refugees pose a security threat.

“IDF officers told Netanyahu that Al Qaida and its offshoots may attempt to send Sudanese refugees across the Egyptian border and into Israel with the aim of setting up terror cells in the Jewish state,” *Ynet*, January 21, 2010

Sudan, it is claimed, is an enemy state. It is on the current list of State Sponsors of Terrorism. There are many Al Qaida cells in the country, which may be training refugees to carry out terror attacks in Israel.

Reality: No asylum seeker has ever been found to post a threat.

No asylum seeker in Israel has ever been accused of terrorist activity. In 2006, when asylum seekers began arriving from Darfur, the state held them in extended detention, claiming that they posed a security threat. In August 2007, the risk said to be posed by Sudanese citizens was lifted, and the courts ordered that they be released. The State of Israel then began arresting asylum seekers based on the existing Infiltration Prevention Law - which grants the Defense Minister powers of detention - so that asylum seekers would not be brought to judicial review proceedings that could order their release. As it was unjust, this apparatus also failed. No proof of threat posed by an asylum seeker was found, and the claim has not been raised since, until now. At present it is being used to try to shift public opinion against the refugees, prior to the attempt to pass the new Infiltration Prevention Bill.

7. Lie: Illegal migrant workers are flooding the country from the Egyptian border, and Israel is doing everything to stop this influx.

“Israel will not let its borders be used to flood the country with illegal migrant workers,” Prime Minister Benjamin Netanyahu, *Ynet*, January 21, 2010

The State of Israel describes the Infiltration Prevention Bill as a means to help it “stop the uncontrollable wave of migrant workers.” By detaining and deporting those who cross the border, we are told, Israel will finally be able to stop the uncontrollable flow of migrants.

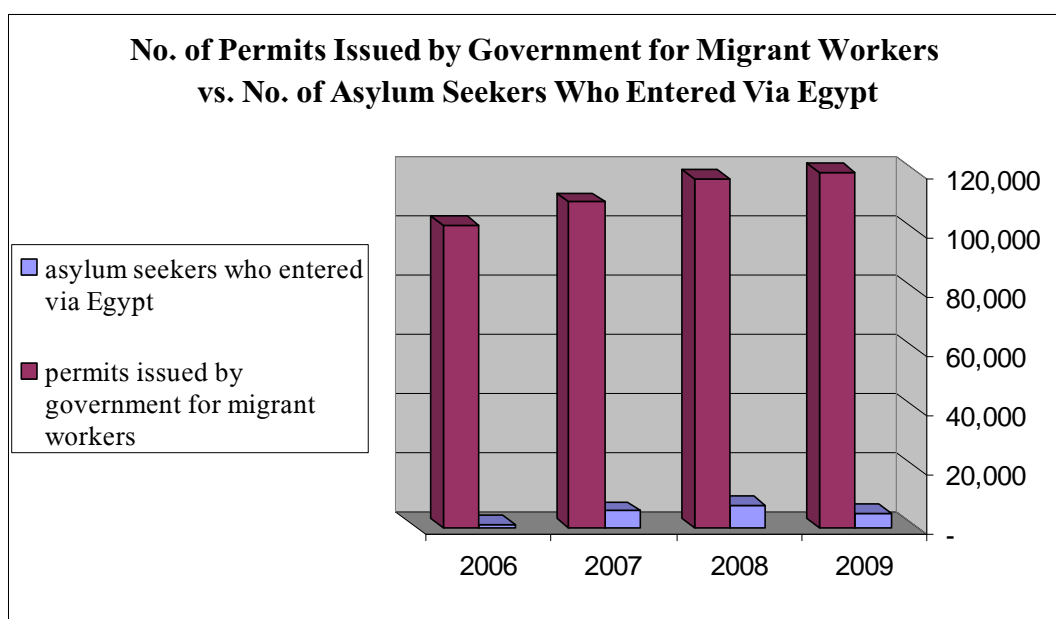
Reality: In 2009, the Netanyahu government brought in 25 times more migrant workers than the number of asylum seekers who crossed the border from Egypt. While the number of work

visas granted to migrant workers is constantly on the rise, the number of asylum seekers coming across the Egyptian border is actually declining.

According to data from the Defense Ministry, 4,787 asylum seekers entered Israel via the Egyptian border in 2009.⁶ This is a 38% decline from 2008. Also in 2009, the Netanyahu government granted 120,000 work visas to migrant workers, a figure that is 25 times higher than the number of asylum seekers entering Israel that year.

While the number of asylum seekers entering Israel every year is decreasing, the number of work permits given to migrant workers only seems to be increasing:

Year	Asylum Seekers Who Entered Via Egypt	Permits Issued by Government for Migrant Workers
2006	1,204	102,000
2007	5,703	110,000
2008	7,707	118,000
2009	4,787	120,000



8. Lie/Myth: The refugees caused deterioration in the employment situation in cities including Arad and Eilat.

"They are causing socio-economic and cultural damage and threaten to take us back down to the level of the Third World. Anyone walking around Arad, Eilat, or even south Tel Aviv today, can see this wave, and the change it is creating, with their own eyes," Prime Minister Benjamin Netanyahu, *Ynet*, January 21, 2010

⁶ Press release issued by the Knesset Committee on Foreign Workers, January 26, 2010.

The claim: The refugees thronged to weak cities, such as Arad and Eilat, taking over the hotel industries in these cities. They are willing to work for low wages, and are bringing down Israelis' wages and pushing them out of these jobs. Because of this, they have caused social unrest.

Reality: The Olmert and Netanyahu governments sent the refugees to Arad and Eilat and introduced regulations that weakened the refugees' financial state.

The Israeli government sent the refugees to Arad and Eilat. In 2007, the “Gedera-Hadera” geographic restriction was introduced and was in place for a year and a half. The restriction barred refugees from residing north of Gedera or south of Hadera. The Immigration Authority's Oz Unit arrested every asylum seeker residing in areas in which they were not permitted to live, and their release was conditioned on a commitment to reside in the periphery. Settling the refugees in the periphery was not the refugees' idea, but a binding government policy. Whoever did not follow the government policy was arrested.

Asylum seekers do not have formal work permits, which allow their employers to disregard their rights and pay them low wages. In such scenarios, there is no real competition in the labor markets. Refugees without rights are preferable to Israeli employees. This is also the result of government policy, and is exacerbated by it. When the issue of asylum seekers not being paid the minimum wage was raised in meetings held by the Knesset Committee on Foreign Workers, the head of the Immigration Authority at the time, Yaakov Ganot, replied, “For a person who needs to eat, NIS 13 per hour is NIS 150 per day.”⁷ In a meeting with representatives from the Tel Aviv-Jaffa Municipality and humanitarian organizations, he expanded on that sentiment, using imagery from the animal kingdom, saying, “If there's no horse, a donkey will do.”⁸

The government's neglect of the weaker sectors of the populations and the privatization of the welfare state does not justify the abuse of the asylum seekers who reached Israel. Contrary to the image of the needy refugee, the status of most refugees is very different. These are young, healthy, resourceful people, and if given the chance they can support themselves and become constructive members of the community. One-quarter of the asylum seekers from Darfur received temporary resident status by virtue of a decision made by the Olmert government, and they work. Many opened successful independent businesses and employ other individuals, and others combine work and academic studies.

9. Lie: Toughening the policy towards “infiltrators” stems from demands made by OECD.

“Even OECD (Organization for Economic Cooperation and Development) representatives who visited last week noted that the large number of foreigners here hurts Israeli society,” Finance Minister Yuval Steinitz, *Ynet*, January 21, 2010

Prime Minister Benjamin Netanyahu and Finance Minister Yuval Steinitz presented the harsher migration policy as a response to criticism by OECD and as a condition for joining the organization. Battling the “infiltrators,” it was claimed, will save Israel from becoming a “Third World” country and will bring it one step closer to joining the prestigious OECD club.

⁷ Minutes from the Knesset Committee on Foreign Workers meeting, February 26, 2008.

⁸ Sinai, Ruth. “If They Can't Get Horses, Let Them Use Eritreans,” *Haaretz*, February 23, 2007.

Reality: The OECD report criticizes the Israeli asylum system and recommends that it be improved to meet international standards.

Israel's asylum system does not meet international standards and improving it, as is customarily done in other member states, is recommended in the report. The report criticizes Israel for the low number of refugees that it has recognized, for the fact that asylum seekers can be taken advantage of by employers and because the country's support and absorption systems are not open to refugees. According to the report:⁹

Even as Israel attempts to reduce illegal border crossing, it is also important to ensure that those who receive permission to stay in Israel – even in a tolerated status – are protected from abuse by employers.

The small number of recognized refugees, on the other hand, lacks any public integration or support program. In light of the experience of Israel with absorbing immigrants, and in light of the absorption services offered to recognized refugees in most OECD countries, it seems advisable that absorption services (e.g. ulpan, youth villages for children) be opened to recognized refugees in Israel.

10. Lie/Myth: All of the refugees want to stay here forever.

The government claims that Israel is a small country. If every asylum seeker is granted refugee status, we will be flooded by an unlimited number of refugees, who will stay here forever, thus changing the country. Once a refugee has set foot in a foreign land, he will never want to leave.

Reality: Most of the refugees recognized by the State of Israel have left the country. Those asylum seekers who have not been recognized are “stuck” and can not leave.

Since the establishment of the State of Israel, only 190 refugees have been recognized as such. More than 100 of them, according to UNHCR figures, no longer live here. In 2007 the Olmert government decided to grant temporary status to the first 500 refugees who arrived from Darfur. Many of them are no longer in Israel, and others are preparing to leave. The reason: Many western countries have refugee and migrant quotas. Unlike Israel, they understand their international obligation and invest resources in absorbing refugees. A main condition for filing an emigration request is legal residence in the country in which the request is filed. By refusing to review asylum requests by Eritrean and Sudanese refugees, Israel is withholding their chance to emigrate to another country, where many of their relatives have already settled. So it seems that the efforts made by the government to make things harder for asylum seekers, so that they will leave, has created the opposite effect: Most of those who were granted refugee status emigrated to countries interested in absorbing refugees. The majority of asylum seekers is trapped in Israel and can not return to their home countries and can not emigrate to other countries that absorb immigrants.

⁹ OECD Reviews of Labour Market and Social Policies: Israel. January 20, 2010, p. 238.

D. Conclusions: The Infiltration Prevention Bill is a Form of Abuse, Not a Policy

The Infiltration Prevention Law is a foolish attempt to turn a humanitarian issue into a security and demographic issue. The facts speak for themselves. The “infiltrators” are not the 21st century version of the "fedayeen". They are refugees from war and genocide, and victims of totalitarian regimes that torture their citizens. They do not constitute a security threat. The “flood” of migrants is not coming from the Egyptian border, but rather from Ben-Gurion International Airport, sponsored by the Israeli government and the “revolving door” policy, which it is responsible for. The obligation to defend the country's security can be found in existing legislation. The grounds presented for the Infiltration Prevention Bill are unfounded and false.

During the Olmert administration, an inter-ministerial team was set up, which was supposed to formulate a policy to handle asylum seekers. The team was to propose solutions to a number of issues including status, health, employment, welfare, education, etc. Within the framework of a number of proceedings dealing with asylum seekers, the government informed the High Court of Justice that the team would discuss all of these issues. The team was disbanded in August 2009 without reaching any conclusions, after Yaakov Ganot, who headed the committee as well as the Immigration Authority, was appointed director general of the Transportation Ministry.

In the absence of a clear policy or solutions, the government now wants to promote the Infiltration Prevention Bill as a “magical solution.” Even though it has long since known that extended detentions of asylum seekers, who can not be deported, and the “Hot Return” to Egypt accomplished nothing. These “solutions” cost a fortune, caused a great deal of misery for the asylum seekers and may have cost refugees' lives.

The signatories of this document call on the Israeli government to withdraw the bill and formulate a proper asylum policy. The asylum policy, which will uphold the rights of the asylum seekers and protect Israel's interests and security concerns, must uphold the following principles:

- **The State of Israel has the right to determine who can enter its borders.**
- **The State of Israel has the right to defend its borders.**
- **The State of Israel has a legal, moral and historical obligation to protect the rights of refugees. The Refugee Convention must be secured in Israeli legislation.**
- **The State of Israel may take measures to reduce the number people who enter the country illegally, but this may not be done while disregarding protection arrangements or the rights of refugees.**
- **The State of Israel will not deport or return an individual to a place where their life or freedom is in danger.**
- **Only a fair, accessible and effective asylum system can regulate the distinction between refugees eligible for asylum and those who ineligible. The State of Israel may deport those who are ineligible for asylum according to the law.**