

הפורום לזכויות פליטים
المنتدى لحقوق اللاجئين
Refugees' Rights Forum



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Policy Paper: The Detention of Asylum Seekers and Refugees

Executive Summary

This policy document is the product of a protracted work process by the eight main organizations involved in the subject of asylum seekers in Israel.

The document:

- Describes the attitude of the Israeli authorities and courts toward the imprisonment of asylum seekers.
- Reviews the position of international law regarding the imprisonment of asylum seekers, discusses the legal interpretation in such countries as England and New Zealand, and details the position of the UN High Commissioner for Refugees on the subject.
- Presents the position of the Israeli authorities regarding the detention of “subjects of enemy states” and their changing attitude toward these subjects, and clarifies the distinction between the detention of asylum seekers under the Entry to Israel Law and detention under the Prevention of Infiltration Law.
- Presents the new government law to prevent infiltration, which was passed by the Knesset at its first reading in May 2008. The new law enables the imprisonment of refugees for up to seven years, as well as their imprisonment without judicial review for two weeks.
- Details the actions of the authorities with regard to approximately 3,000 asylum seekers from Eritrea who have fled to Israel over the past year.
- Reports on the expansion of Ketsiot Prison and describes the detention of minors in harsh conditions contrary to the Convention on the Rights of the Child.
- Concludes by presenting the organizations’ recommendations to the government of Israel regarding the detention of asylum seekers. These recommendations are clearly mandated given that Israel has signed the Convention relating to the Status of Refugees and the Convention on the Rights of the Child.
- The principal recommendations are: To refrain from detention other than for the purpose of establishing identity, undertaking a preliminary interview, or when the asylum seeker is carrying false documents or has destroyed his documents. Even in these cases, the period of detention should not exceed 7-14 days. The member organizations of the Refugee Rights Forum believe that asylum seekers should not

be discriminated against on the basis of their country of origin or any other distinction during processes relating to the denial of their liberty. The organizations strongly object to the detention of children.

The detention of asylum seekers in the International Convention relating to the Status of Refugees: It emerges from Article 31(1) of the Convention relating to the Status of Refugees that the fact that asylum seekers entered Israel unlawfully cannot in itself constitute grounds for holding them in detention. The convention imposes restrictions, under certain conditions, on the possibility of penalizing a refugee for illegally entering the state in which he requests asylum. According to the accepted interpretation of this article in the convention, and if the conditions stated in the convention are met, the mere fact that a refugee illegally entered the state in which he is seeking asylum cannot constitute grounds for holding him in detention under the general immigration laws of the state. Moreover, in accordance with the accepted interpretation of this article, this prohibition applies not only to persons who have already been recognized as refugees by the state in which they are requesting asylum, but also to asylum seekers whose application for asylum has not yet been determined. Article 9(1) of the Covenant on Civil and Political Rights prohibits arbitrary detention. It is established several times that holding asylum seekers in detention for protracted periods while their applications are examined and while no deportation procedures are underway constitutes arbitrary detention. The imprisonment of asylum seekers in order to deter other asylum seekers from arriving in Israel is also prohibited under Article 3 of the UN High Commissioner for Refugees' Guidelines on Detention.

The detention of asylum seekers in Israeli law: there is no law in Israel regulating the status of asylum seekers and refugees. Recent attempts to enact such a law encountered opposition from Members of Knesset. In legal terms, an asylum seeker in Israel is defined as an "unlawfully present person" or as an "infiltrator." The point of departure of the State of Israel is that a deportation warrant and warrant for arrest will be issued against an asylum seeker present in the country without authorization; the execution of the deportation order will be suspended pending completion of the procedures in his application for refugee status. In accordance with Israeli law, one of the grounds for the release of unlawfully present persons, including asylum seekers, is when the period of detention exceeds 60 days and there is no possibility to execute the deportation order. Rulings of the Supreme Court and the district courts on this matter reflect the principle that a balance must be struck between the interest to deport from Israel unlawfully present persons and their right to liberty. Since the sole purpose of detention is to execute deportation from Israel, in the absence of effective deportation procedures it is inappropriate to continue to hold the person in detention.

The attached document includes detailed discussion of these important aspects, as well as the personal stories of David and Bol, asylum seekers from southern Sudan who describe the conditions of their protracted detention in Israeli prison and their feelings during this difficult period.

The Detention of Asylum Seekers and Refugees

In recent years there has been a substantial increase in the number of asylum seekers arriving in the State of Israel and submitting applications for asylum under the terms of the 1951 International Convention Relating to the Status of Refugees.¹ During the period 2002-2006, an average of approximately one thousand asylum requests were submitted each year. Accordingly to figures from the Population Administration, in 2007 a total of 5,300 people entered Israel without authorization across the border between Egypt and Israel; many of these people have submitted requests for asylum. As the numbers have grown, Israel has begun to take various measures intended to deter asylum seekers from entering Israel, including the imprisonment of many asylum seekers, some of whom are young children or babies.

At present approximately one thousand asylum seekers are being held at Ketsiot Prison, including approximately one hundred children held together with their parents. An additional group of approximately 600 asylum seekers are being held at Ma'asiyahu Prison in Ramle, and a few dozen unaccompanied minors are being held at the Michal incarceration facility in Hadera. Many of the asylum seekers have been held for protracted periods lasting many months.

In view of the importance of the issue of the detention of asylum seekers and refugees, and the ramifications of the authorities' policy on this matter for the most fundamental rights of the asylum seekers, the goal of this policy paper is to examine the changing policy adopted by the State of Israel relating to the detention of asylum seekers and refugees; highlight the ramifications of this policy in terms of the fundamental rights of the asylum seekers; detail the requirements of international law in this respect; and present the position of the Refugee Rights Forum concerning the detention of asylum seekers.

Detention Procedures against Asylum Seekers in Israel: The General Framework

The vast majority of asylum seekers who arrive in Israel enter without authorization via the southern border with Egypt. Of asylum seekers who enter the country lawfully, most do so via the border crossings with a tourist visa that is usually valid for a period of three months; once this expires, they remain in Israel without authorization.

Israel considers such persons to be, first and foremost, unlawfully present in the country. As noted in the previous policy papers, Israel has not enacted any legislation concerning refugees and asylum seekers. Conversely, it has developed a complex system of laws relating to mechanisms for the detention and deportation of unlawfully present persons. The state also employs these mechanisms against asylum seekers.²

The point of departure of the State of Israel is that a deportation warrant and warrant for arrest will be issued against an asylum seeker present in the country without authorization. However, the execution of the deportation order will be suspended pending completion of the procedures in his application for refugee status. This suspension is applied in consideration of the principle of the non-refoulement of asylum seekers; this aspect has been examined in depth in a separate policy paper.

However, a clear distinction may be made between the manner in which the authorities treat two distinct groups of asylum seekers – asylum seekers who were arrested before they contacted the UN High Commissioner for Refugees to request refugee status, and asylum

¹ Convention Documents 65, Vol. 3, p. 5.

² Entry to Israel Law, 5712-1952 (hereinafter – “the Entry to Israel Law), Articles 13-13U.

seekers who contacted the UN High Commissioner for Refugees and requested refugee status before their arrest. As we shall explain below, this distinction is not always reasonable, but it forms the basis for the treatment of asylum seekers by the State of Israel.

The official policy on this matter does not appear in any procedure or other written document, but statements by representatives of the UN High Commissioner for Refugees in Israel suggest that it has been agreed between the Interior Ministry and the High Commissioner. In accordance with this policy, and as a general rule, asylum seekers who have contacted the High Commissioner will not be arrested for as long as their application is being examined. An asylum seeker who has submitted an application receives a document from the UN High Commissioner for Refugees testifying that his³ case is being examined. In the initial phase these documents do not bear the asylum seeker's photograph. According to the guidelines of the Migration Police, a person bearing such a document is not to be arrested; in case of doubt as to the authenticity of the document, the police are to detain the bearer, contact the Commissioner, and release the individual after clarifying his status with the Commissioner. A person bearing a valid document issued by the Commissioner is supposed to be protected against arrest. When the application to recognize the asylum seeker as a refugee is rejected, the asylum seeker is given one month to leave Israel; if he fails to do so within this period, he will be liable to arrest and deportation. An asylum seeker whose application is rejected but who submits an application to the Commissioner to re-examine his case will not be arrested pending completion of the appeals procedures.

By contrast, an asylum seeker who is apprehended by the authorities before he has a chance to contact the UN High Commissioner for Refugees will be arrested. In most cases these are asylum seekers who are arrested along the border, usually after handing themselves over to Israeli security forces in order to request asylum in Israel. Clearly such individuals have not had an opportunity to submit an asylum request, yet despite this deportation orders are issued against them, as well as orders for arrests for an unlimited period. The examination of their application for asylum in Israel takes place while they are in detention.⁴ If the initial screening process has been completed and it has been found that an asylum seeker's application may form the basis for his recognition as a refugee, the asylum seeker is released from detention on the request of the Commissioner. However, a protracted period sometimes amounting to several months may pass before this stage is completed, and during this period the asylum seeker is held in detention.

In accordance with Israeli law, one of the grounds for the release of unlawfully present persons, including asylum seekers, is when the period of detention exceeds 60 days⁵ and there is no possibility to execute the deportation order. According to a Supreme Court ruling, a person is to be released from detention after 60 days if he was not deported by that time, provided that the delay in deportation was not due to a lack of cooperation on his part, and that he does not constitute a danger to state security or to public health or well-being. This provision applies unless there is "a public interest of tangible weight requiring the continued holding of the person in custody for a period not deviating from that which is reasonable."⁶ This rule reflects the principle that a balance must be struck between the interest to deport from Israel unlawfully present persons and their right to liberty. Since the sole purpose of detention is to execute deportation from Israel, in the absence of effective deportation procedures it is inappropriate to continue to hold the person in detention.

³ The masculine form is used in this report for the sake of brevity and ease of reading; the reference is equally to men and women.

⁴ Article 1B of the Procedure Regulating the Processing of Asylum Seekers, 2002.

⁵ Article 13F(A)(4) of the Entry to Israel Law.

⁶ APD 173/03 State of Israel v Salameh, ruling dated 9 May 2005.

The screening procedures undertaken by the High Commissioner invariably last more than sixty days. Moreover, given the increase in the number of asylum seekers in Israel, the Commissioner is currently preoccupied mainly with registering asylum seekers, and in practice engages in very few refugee status determinations (RSDs). As a result, the period of time asylum seekers spend in detention while the Commissioner undertakes screening, which was always protracted, has now become even longer and is effectively unlimited.

Despite this, the Interior Ministry has not ordered the release of asylum seekers who have been held in custody for protracted periods (or asylum seekers who clearly will not be deported within 60 days). The reason for this is that, according to the ministry, these individuals are “failing to cooperate” with their deportation by virtue of their submitting the application; accordingly, the protracted detention cannot constitute grounds for their release.⁷

The state’s position that a person who requests asylum in Israel is considered to be “failing to cooperate” with his deportation is inconsonant with international law. The right of every person to request asylum has been recognized as a basic right,⁸ and the applicability of the principle of non-refoulement to asylum seekers whose application has not yet been determined is also recognized by the Israeli authorities. Determining that the submission of an application for refugee status is tantamount to failure to cooperate, and thus justifies the sanction of unlimited detention, denies the right of a person to request asylum and may also be considered a step intended to deter others from submitting such applications.

It is important to note that Haifa District Court recently disqualified the approach of the Interior Ministry on this matter. Discussing the case of an asylum seeker who was held in detention for a protracted period, the court ruled that since the asylum request proceeding and the appeals proceeding are recognized by the State of Israel as proceedings justifying the postponement of deportation, asylum seekers could not be considered persons failing to cooperate with deportation.⁹ However, despite the fact that the state did not appeal the ruling, the Interior Ministry and the Custody Review Court, which scrutinizes the detention decisions of the Interior Ministry, have continued to treat asylum seekers as persons failing to cooperate with deportation, and hence refuse to release them pending completion of the first stage of the screening proceedings.

A further defect in detention policy relates to the arbitrary nature of the distinction between a person caught after contacting the High Commissioner and requesting refugee status, who is protected against detention pending the completion of the examination of his request, and a person caught before he has contacted the Commissioner, who is detained pending completion of the proceeding. The arbitrary nature of this distinction is particularly evident given the fact that most asylum seekers who have not contacted the Commissioner at the time of their arrest are seized along the border, shortly after crossing into Israel; clearly, they could not yet have contacted the Commissioner. Many asylum seekers turn themselves in at the border and clarify that they are requesting asylum. The consequence is that those who choose to turn themselves in are “punished” for so doing by indefinite detention, while those who choose to evade the security forces on the border and manage to reach Tel Aviv and go to the High Commission are rewarded therefore. This policy encourages asylum seekers not to submit requests in an open manner, immediately after crossing the border, but to attempt to cross it without encountering the authorities. It must be doubted whether the State of Israel has an interest in this outcome.

⁷ Entry to Israel Law, Article 13F(2)(1).

⁸ Article 14(1) of the 1948 Universal Declaration of Human Rights.

⁹ AA (Haifa) 468/07 Lastur v State of Israel, ruling dated 6 November 2007.

Detention for the Purpose of Deterrence

The detention of asylum seekers as undertaken in Israel is inconsonant with international law, since the convention restricts the possibility of punishing a refugee for the mere act of unlawfully entering the country in which he requests asylum.¹⁰ According to the accepted interpretation of this article in the convention, the mere fact that a refugee illegally entered the state in which he is seeking asylum cannot constitute grounds for holding him in detention under the general immigration laws of the state. Moreover, in accordance with the accepted interpretation of this article, this prohibition applies not only to persons who have already been recognized as refugees by the state in which they are requesting asylum, but also to asylum seekers whose application for asylum has not yet been determined.¹¹

According to the convention, refugees who are lawfully present in the country in which they are requesting asylum are entitled to freedom of movement and, accordingly, may not be arrested.¹² According to the accepted interpretation of this article, the prohibition also applies to asylum seekers whose asylum request has not yet been determined.¹³ The Israeli authorities regard asylum seekers who have crossed the border as “unlawfully present persons,” but in accordance with the interpretation of the convention, as emerges from the protocols of the authors of the convention¹⁴ and from the rulings of courts around the world,¹⁵ an asylum seeker is considered, for the purpose of this article and additional articles in the convention, to be lawfully present in the state once he has requested asylum, and not only after the examination of his request has been completed. Accordingly, this provision applies even with regard to asylum seekers who have been held in detention by Israel for protracted periods.¹⁶

In accordance with the guidelines of the UN High Commissioner for Refugees, the basic assumption is that the detention of asylum seekers is inherently undesirable,¹⁷ and may be undertaken only in exceptional cases and as necessary.¹⁸ According to the guidelines and decision of the executive committee of the Commissioner, an asylum seeker may be arrested only when detention is required for the purpose of establishing identity, undertaking a preliminary interview, or when the asylum seeker has destroyed his identifying documents or has used forged documents to mislead the authorities of the country in which he intended to request asylum (if these actions were committed deliberately and with the **intention of misleading or defrauding** the authorities); or in order to protect state security or public order.¹⁹ In accordance with the guidelines, when these goals may be secured without detaining the asylum seeker, he should not be held in detention; each case is to be examined on an individual basis. When detention is necessary, it must be for the shortest possible period.

¹⁰ 1951 UN Convention Relating to the Status of Refugees, Article 31(1).

¹¹ See the New Zealand ruling: Attorney General v E, [2000] 3 NZLR 257, as well as the English rulings R. v Uxbridge Magistrates Court, [1999] 4 All ER 520 [1999], parte Adimi, and Khaboka v Secretary of State for the Home Department, [1993] Imm AR 484.

¹² Article 26 of the 1951 UN Convention Relating to the Status of Refugees.

¹³ J.C. Hathaway, *The Rights of Refugees Under International Law* (Cambridge University Press, 2005), pp. 416-417.

¹⁴ UN Doc.E/AC.32/SR.15.

¹⁵ See the ruling of the Australian Federal Court in Rajendran v Minister for Immigration and Multicultural Affairs, (1988) 166 ALR 619; see also the ruling of the Supreme Court of Appeals in South Africa in Minister of Home Affairs v Watchnuka (2004) 1 All SA 21.

¹⁶ It should be noted the certain rights, such as the freedom of association, are guaranteed under the convention only to persons who have already been recognized as refugees and have received status in the state of asylum (in these cases, the convention uses the term “lawful stay,” as distinct from other cases, when it uses the term “lawful presence.”)

¹⁷ UNCHR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (February 1999), Introduction, section 1 (UNHCR Detention Guidelines).

¹⁸ UNHCR Guidelines, Guideline 3.

¹⁹ EXCOM Conclusion No. 44 (XXXVII), 1986; UNHCR Detention Guidelines, Guideline 3.

Insofar as detention is a means for the execution of deportation, protracted detention in cases when no effective deportation proceedings are being pursued is unlawful.²⁰ International law prohibits arbitrary detention,²¹ and it has been established on several occasions that holding asylum seekers in detention during the examination of their request, in the absence of any deportation proceedings, constitutes arbitrary detention.²² In addition, and as already clarified, the Israeli authorities regard the detention of asylum seekers as a mean of deterring additional asylum seekers from entering Israel; such a purpose is alien to the goal of deportation, cannot justify detention,²³ and is not included in the exceptional cases in which asylum seekers may be held in detention.

The Detention of “Subjects of Enemy States”

The rules and procedures described thus far apply to all asylum seekers in Israel who are not considered “subjects of enemy states.” The latter, however, are subject to different rules that have undergone a number of changes in recent years. The point of departure in examining the requests of asylum seekers from these countries is the decision by the State of Israel, contrary to the obligations imposed on it under the UN Refugees Convention, that asylum seekers from such countries will not be admitted to Israel’s asylum system.

As we have noted in previous policy papers, Israel’s asylum system is regulated by a procedure introduced in 2002. The procedure establishes, among other provisions, that “the State of Israel reserves the right not to absorb in Israel and not to grant permission to be present in Israel to the subjects of enemy states or hostile states – as these shall be determined from time to time by the relevant authorities, and for so long as they hold such status; and the question of their release on bail shall be examined in each case on its own merits, in accordance with the circumstances, in accordance with security considerations.”²⁴ The same policy applied even before it was formalized in the procedure.

During the 1990s, this policy was relevant mainly in the case of asylum seekers from Iraq, whom Israel refused to recognize as refugees and to grant them status as such. Since it was impossible to deport these asylum seekers, both given the danger facing them if they returned to Iraq and due to the lack of diplomatic relations between Israel and Iraq, they were held in detention for protracted periods and, in some cases, for several years. Israel refused to release the asylum seekers on the grounds that, as Iraqi citizens, they presented a danger to state security, despite the absence of any individual evidence of such a danger.

After several petitions were submitted, the High Court of Justice ruled that the authority of detention must be interpreted in a manner that is consonant with its purpose – to execute deportation. When deportation is impossible, release to an alternative to detention should be considered.²⁵ Following this ruling, the Iraqi asylum seekers were released and placed in alternative frameworks to detention in kibbutzim, in accordance with an agreement between Israel and the UN High Commissioner for Refugees. It should be noted that the time, given

²⁰ On this aspect, see the ruling of the European Court of Human Rights: *Chahal v United Kingdom* (1996) 23 EHR 413, para. 113. Regarding the applicability of this principle to detentions under the Entry to Israel Law, see also the Israeli rulings: H CJ 1468/90 *Ben Yisrael v Interior Minister*, *Piskei Din* 44(4) 149, 151-152; H CJ 4702/94 *Al-Tai v Interior Minister*, *Piskei Din* 39(3) 843 (hereinafter – “the Al-Tai HCJ ruling;”) AAD (Haifa) *Anonymous (Minor) v Interior Ministry*, verdict dated 24 January 2007.

²¹ Article 9(1) of the International Covenant on Civil and Political Rights, Convention Documents 31, 269.

²² For example, see the decision of the Human Rights Committee in Australia in the case of an Iranian asylum seekers who was held in detention for a protracted period during the examination of his application for refugee status: *C. v Australia*, Human Rights Committee Communication No 900/1999: Australia 13 November 2002, CCPR/C/76/D/900/1999.

²³ The Al-Tai HCJ case, see above. See also the UNHCR Detention Guidelines, Guideline 3(iv).

²⁴ Section 6 of the Procedure for the Regulation of the Processing of Asylum Seekers, 2002.

²⁵ The Al-Tai HCJ case, note 20 above.

the very small number of refugees entering Israel who were the subjects of “enemy states,” other countries agreed to absorb refugees to whom Israel refused to grant asylum. As the number of asylum seekers defined by Israel as “subjects of enemy states” grew, other countries were no longer willing to absorb these refugees.

In 2004, Human Rights Organizations discovered that the military was holding asylum seekers from Sudan who had crossed the border into Israel. The asylum seekers had been held at Ketsiot Prison for many months. Their detention was unlawful: no orders had been issued against them; the UN High Commissioner for Refugees or the Red Cross had not been notified of their detention; and they had not been given an opportunity to contact any external body or to turn to the courts. Following the exposure of the unlawful detentions, the Sudanese asylum seekers were transferred to the “civilian” facilities used for the detention of persons unlawfully present in Israel; detention and deportation orders were issued against them. Again, however, they were held in detention for protracted periods, since it was impossible to deport them to Sudan, where their lives would be endangered if they were returned from Israel, and given Israel’s insistence that they could not be recognized as refugees since they were the subjects of an “enemy state.”

The Story of David,²⁶ a Refugee from Southern Sudan

My name is David and I am a Christian from Southern Sudan. I am a member of the Nuer tribe. In my place of residence I worked in a European security firm. IN 1998 the US army bombed a factory in Sudan. I was working as a guard that night. I was shot in the leg, arrested, held in prison in Khartoum, and accused of spying for the US. I was tortured for about one week and did not receive any treatment for my injured leg. After about one week, my leg swelled up badly and I was transferred to hospital. The security in the hospital was not very strict and I managed to escape to Gadarif. I realized that I had to escape from Sudan and in March 1999 I found a way to get to Egypt, where I contacted the UN High Commissioner for Refugees and was recognized as a refugee.

Life in Egypt was very difficult, even for a recognized refugee. Many of the Sudanese refugees suffer harassment from the local population. We cannot get work permits and in any case it is very hard to find work. Despite this, I met a young woman who is also from Southern Sudan and in 2004 we had a son. Making a living became even harder.

In September 2005 a major demonstration began outside the offices of the Commissioner in Mustafa Mahmud Gardens. The United Nations closed the offices and stopped processing applications. At the end of December 2005, Egyptian police came to the site and shot at the demonstrators. Many were killed and injured, and those who were not injured were arrested. I was also arrested. I was released after just one day thanks to my blue refugee’s card. After that employers completely refused to employ Sudanese, and landlords refused to rent out apartments to us. Policemen used to catch Sudanese in the street and beat them. I tried to make a living for my family selling cakes we baked at home, but I realized that we had to leave Egypt, too.

I knew that Israel is a democracy and I thought that it could be a good place for a refugee like me. We decided that I could go there on my own, and then I would find a way to bring my wife and child. In April 2006 I left them at an acquaintance’s home in Cairo and set out for Israel. I walked through the desert for two days until I managed to cross the border. I waited for the Israeli army to find me. The soldiers took me to Ketsiot Prison together with other refugees who arrived over the same period.

²⁶

The refugees’ names have been changed in order to protect their privacy.

I spent nine months (April 2006 through January 2007) in a huge tent in wing 15 of Ketsiot Prison, together with approximately 70 other Sudanese. We had access to three toilets and three showers. We slept on narrow beds and each of us was given two thin blankets that could not protect us against the winter cold of the desert. To keep warm we used to collect the old blankets and clothes that the Palestinian prisoners in the adjacent wings threw into the garbage.

We did not have anything to do. Sometimes the wardens would come and take a few of us to do some work. Those who were chosen to do work did not receive any pay, but they were given a few cigarettes, so those of us who smoked were happy to go to work. Everyone complained a lot that we were being imprisoned for so long with nothing to do, but I was mainly bothered that we did not have access to a telephone. I could not inform my wife that I had arrived safely in Israel. I did not have any money to send her and I did not know how she would get by without money.

Two months after I arrived in Ketsiot some Sudanese from Ma'asiyahu Prison arrived in our tent; others followed. We were told that they came for a meeting with the United Nations. I heard from the new detainees that in Ma'asiyahu Prison there were public telephones, and that some of the detainees even had mobile phones. I saved cigarettes and gave them to one of the Sudanese who was transferred to Ma'asiyahu and asked him to call my wife in Cairo. When he returned to Ketsiot I learned from him that my wife had been pregnant when I left her. This news made me worry even more – a 23-year old Sudanese woman, pregnant, who had to survive in hostile Egypt with a two-year old boy and with no way to make a living. I gathered that she would be due to give birth in December but there was no way I could check this. I gave the telephone number to volunteers from the Hotline for Migrant Workers who visited us and asked them to contact my wife. Unfortunately, the next time they came to visit they told me that my wife's telephone number was disconnected. I could not stop thinking about my family, left without any source of livelihood and without any information about me.

The state justified the protracted detention of the Sudanese asylum seekers – some of whom were held for approximately two years – on security grounds, claiming that they presented a danger. For a long period, the Custody Review Court, the quasi-judicial body that scrutinizes the decisions of the Interior Ministry on the subject of detentions, accepted these claims, particularly in view of the Interior Ministry's promises that the process of deporting the asylum seekers to Egypt was underway. However, as time passed and there was no sign of deportation, and after the state proved unable to show that even a single Sudanese asylum seeker posed any danger, the Custody Review Court began to release Sudanese asylum seekers into alternative detention in the kibbutzim. At first those included in this arrangement were asylum seekers suggested by the UN High Commissioner for Refugees; these were later joined by asylum seekers proposed by the member organizations of the Refugee Rights Forum.

From the beginning of 2006, in order to circumvent the court's willingness to release Sudanese asylum seekers, the Interior Ministry began to replace the detention orders under the Entry to Israel Law (which are subject to review by the court) with detention orders under the Prevention of Infiltration Law,²⁷ which are issued by the military authorities. Emergency legislation enacted in 1954 permits the detention of a person defined as an "infiltrator" for an unlimited period under an order issued by the defense minister, without any procedure and without judicial review. In this manner the state was able to bypass the decisions of the Custody Review Court and to hold hundreds of asylum seekers, whom it terms "infiltrators," for months on end without access to the courts.

²⁷

Prevention of Infiltration Law (Offenses and Jurisdiction), 5714-1954.

Four petitions were submitted to the High Court of Justice in April 2006 by the Hotline for Migrant Workers and the Refugee Rights Program at Tel Aviv University.²⁸ The Supreme Court ruled that the state must ensure judicial review of the detention of the Sudanese asylum seekers,²⁹ and one of the judges from the Custody Review Court was appointed a “special advisor the defense minister” with responsibility for examining the detainees on an individual basis and recommending to the military authorities whether or not they should be released. This mechanism also failed to meet the minimum requirements for the judicial review of detention; the body involved has an administrative rather than a judicial character; it is empowered only to recommend, and not to decide; the “advisor” is appointed by the defense minister rather than through a procedure ensuring independence; and no legal imperative is established for his actions.

Despite the inherent defects of the mechanism, the advisor accepted the position of the human rights organizations and ruled that since it was impossible to deport the Sudanese asylum seekers, and given the absence of any evidence suggesting that they presented a danger, they should not continue to be held in detention. His recommendations were adopted, albeit reluctantly, and hundreds of asylum seekers were released.

In the first stage, however, the Sudanese asylum seekers were released into alternative detention in the kibbutzim. Their movement was restricted to the area of the kibbutz, and they could leave only if accompanied by a kibbutz member. This restriction was again imposed on the basis of their status as subjects of an “enemy state” whose release must be conditioned on strict supervision. Asylum seekers from other countries were released without conditions after completing the initial screening stage and could live and work wherever they chose. The Sudanese asylum seekers were later released into alternative detention, under the same restrictive conditions, in moshavim, most of which were interested mainly in securing cheap labor.

In addition to the immediate injury to the liberty and freedom of movement of the asylum seekers, the conditioning of their release on their remaining in a specific situation (and, in practice, in the employ of a specific agricultural employer) led to the “shackling” of the asylum seekers to their employers. Dismissal or resignation would clearly lead to the asylum seeker being returned to detention, at least pending the location of a new arrangement for alternative detention.³⁰ This created fertile ground for exploitation, including late payment of wages, payments below the minimum wage, and the housing of asylum seekers in conditions that were far from appropriate (it must be emphasized, however, that not all employers acted in this manner).

Moreover, the “alternative detention system” meant that the release of the asylum seekers was totally dependent on the actions of the human rights organizations, which identified kibbutzim and moshavim and requested their release.

Within just a few months, however, the “assumption of danger” posed by the Sudanese citizens and the “alternative detention system” both collapsed. From March 2007, the advisor to the defense minister agreed to recommend that asylum seekers also be released for work in hotels in Eilat; their freedom of movement was restricted to the city of Eilat. The presence of a growing community of Sudanese asylum seekers that was free to move within the city limits of Eilat, coming into daily contact with the local population, rendered the claims that they presented a danger to state security unconvincing in the extreme.

²⁸ H CJ 3208, 3270, 3271, 3272/06, 4 Refugees v Head of IDF Operations Division.

²⁹ H CJ 3208/06 et al., decision dated 8 May 2006.

³⁰ It should be noted that the similar shackling of migrant workers was disqualified by the Supreme Court in H CJ 4542/02 Workers’ Hotline et al. v Government of Israel, ruling dated 30 March 2006.

The reality on the ground continued to erode the twin pillars of the “assumption of danger” and the “alternative detention system.” During the period April – July 2007, and to a lesser extent thereafter, the military released hundreds of Sudanese (and other) asylum seekers onto the streets of Beersheva, due to a dispute between the military and the Migration Police concerning the responsibility for their detention, and due also to the shortage of places for detention. Some seven hundred Sudanese asylum seekers were released unconditionally and without any restriction to a given geographical area. The asylum seekers traveled from Beersheva to Tel Aviv, contacted the UN High Commissioner for Refugees, and received documents protecting them against arrest. A situation emerged whereby the decision as to whether a person would be released on the day they entered Israel and remain free, at least, pending the clarification of their application for refugee status, or alternatively would be held in detention, sometimes for months, and eventually released to a restrictive alternative, was dependent solely on the number of imprisonment places available on that day. In this situation, the argument that restrictive conditions were required for the purpose of supervision became nothing less than absurd.

In August 2007, responding to petitions against detention under the Prevention of Infiltration Law, the state agreed to end the use of the mechanism for preventing infiltration. Today, the majority of asylum seekers in detention are held under the provisions of the Entry to Israel Law. However, the Prevention of Infiltration Law is still improperly used during the first few days of the detention of asylum seekers in order to postpone the date of judicial review of the detention.

Since September 2007, the Custody Review Court has begun to release Sudanese asylum seekers without requiring them to remain within a particular geographical area; instead, the asylum seekers are required to provide their address and to report to the police. The Interior Ministry has initiated a proceeding (which has not yet been completed) to transfer asylum seekers released into alternative detention to the “track” provided by the Entry to Israel Law.

As of the time of writing this policy paper, the situation has in some respects been reversed. While in the past asylum seekers from all other countries were released after completing initial screening by the UN High Commissioner for Refugees, while Sudanese asylum seekers were not released at all, today it is the Sudanese who are released, while others continue to be held for indefinite periods.

This situation is the result of the recognition that Sudanese citizens cannot be deported to their homeland, combined with the almost complete cessation of RSD applications due to the growing number of asylum seekers. As noted, the UN High Commissioner for Refugees is currently preoccupied with registering asylum seekers, rather than with screening. Accordingly, detained asylum seekers cannot in practice complete the initial screening process and secure their release. Conversely, in cases involving Sudanese citizens, the Custody Review Court confines itself to ensuring that the UN High Commissioner for Refugees has identified the detained asylum seeker as a Sudanese citizen, and does not require that the asylum seeker pass the first hurdle of recognition as a refugee.

Proposed Law 381 - Prevention of Infiltration, 5768-2008

As far as entry to Israel is concerned, however, yet another change in the treatment of asylum seekers may be imminent. On 19 May 2008, the Knesset passed at its first reading a government proposed law to prevent infiltration. If passed by the Knesset, this proposal will lead to the violation of the basic principles of Israeli law, and to the violation of the provisions of international conventions to which the State of Israel is a signatory.

We shall confine our comments here to those aspects of the proposed law that relate to the duration and conditions of detention of asylum seekers:

1. The proposed law does not make any reference to the detention of minors, children, and babies. Although the district court has established an obligation for minors to be represented before the court,³¹ and although the State Prosecutor's Office has issued a procedure regarding the detention and deportation of minors requiring a briefing by a welfare officer, the terms of which are to be followed,³² the ruling and the procedure are not reflected in the proposed law.
2. The proposed law permits the administrative imprisonment of all persons entering the borders of the State of Israel, including children and minors, without any judicial review for a period of up to 28 days (14 days in accordance with the proposed law, plus 14 days after transfer to the detention track under the Entry to Israel Law).³³
3. The proposed law does not mention any maximum period of detention, thus permitting the imprisonment of asylum seekers for extremely long periods. The chance of release in such circumstances is extremely limited and, in the case of the citizens of enemy states, such as Sudan – totally nonexistent.³⁴
4. The proposed law permits the incarceration of migrant workers and asylum seekers alongside criminal prisoners.³⁵

On 20 May 2008, the State Ombudsman published a report for 2007 which included sharp criticism of the behavior of the state with regard to asylum seekers and refugees. Regarding the detention of asylum seekers, the State Ombudsman chose to note that due to a protracted dispute between the military and the GSS regarding the “danger” posed by all Sudanese citizens, many of these citizens had been held in detention for protracted periods. Since the prime minister and defense minister failed to take action to abolish the “assumption of danger” imposed on these asylum seekers, most of them were held in detention without judicial review and without access to arrangements enabling release on bail. Even after a review instance was created for the detention of asylum seekers, this examined only a minority of the cases of detention of Sudanese asylum seekers, and even these procedures were implemented after a substantial delay.³⁶

Israel's behavior over recent years regarding political asylum for the subjects of “enemy states” is also inconsonant with Israel's obligations. The UN Convention Regarding the Status of Refugees prohibits the discrimination of refugees on various grounds, one of which is their country of origin.³⁷ The principle of non-discrimination, like other principles in the convention, applies not only to persons who have already been recognized as refugees, but also to asylum seekers whose requests have not yet been determined. Accordingly, discrimination against asylum seekers who are the subjects of “enemy states” in detention proceedings is prohibited.

³¹ AA (Haifa) 379/06 Anonymous (Minor) v Interior Ministry (ruling dated 24 January 2007).

³² Procedure for Processing Unaccompanied Foreign Minors, State Prosecutor's Office, draft dated 3 January 2008.

³³ Government Proposed Law – 381, 25 Adar II 5768, 1 April 2008, Article 12C.

³⁴ Ibid., Article 15.

³⁵ Ibid., Article 14.

³⁶ Report of the State Ombudsman, 58B for 2007, Chapter One: “Processing of Applicants for Political Asylum in Israel,” pp. 99, 111-112.

³⁷ Article 3 of the 1951 UN Convention Relating to the Status of Refugees.

Moreover, in accordance with the guidelines of the UN High Commissioner for Refugees, in exceptional cases in which asylum seekers are held in detention, various procedural guarantees are required.³⁸ Among other provisions, the detention of asylum seekers is conditioned on subjection to automatic review (which takes place even if the detained person does not initiate legal proceedings) by a judicial body or an independent administrative body; on the maintenance of periodic review; on the right of the detainee and his representative to be present in the review proceedings; on his right to refute factual findings; and on his right to contact the UN High Commissioner for Refugees and additional organizations.³⁹ The detention of asylum seekers in accordance with the Prevention of Infiltration Law, initially without any judicial or administrative review and thereafter subject to review by a special advisor to the defense minister does not meet the minimum requirements for ensuring fair proceedings in the detention of asylum seekers.

In accordance with the guidelines of the UN High Commissioner for Refugees, one of the exceptional cases justifying the detention of asylum seekers is when they present a danger to state security or to public wellbeing;⁴⁰ as a general rule, their freedom of movement is not to be restricted.⁴¹ The State of Israel initially attempted to argue that all the Sudanese asylum seekers presented a danger; later, it argued that it could not examine which of them presented a danger to state security and which did not and, accordingly, all these asylum seekers should be held in detention or in restrictive alternative detention. However, the convention and court rulings from around the world show that sweeping security claims cannot be made with regard to an entire group of asylum seekers; the authorities must show that a specific asylum seeker presents an individual security threat.⁴²

Eritrean Asylum Seekers – “Shackling” to the Employer and Restriction of Freedom of Movement as Conditions for Release from Detention

Alongside the softening of the detention arrangements concerning asylum seekers from “enemy states,” the arrangements supposedly intended to address the assumption of danger were applied to asylum seekers from additional countries. In the summer of 2007, a significant increase was seen in the number of asylum seekers from Eritrea. Eritrea is not considered an “enemy state,” but it is not possible to return asylum seekers to Eritrea after numerous cases in which asylum seekers deported to Eritrea have “disappeared.”

Although there could be no claim that these asylum seekers presented a danger, the Interior Ministry adopted a similar policy in their regard as it did in the case of asylum seekers from Sudan, with the clear objective of deterring additional asylum seekers from coming to Israel. As in the case of the Sudanese asylum seekers, this policy also led to appalling exploitation of the Eritrean arrivals. The Interior Ministry released Eritrean asylum seekers for work with agricultural employers it identified. One of the conditions of release was that the asylum seeker was not permitted to leave his employer or to leave the area of the moshav. Once again, many of the employers exploited the power they were given, paying sums below the minimum wage, accommodating the asylum seekers in inhuman conditions, and denying them access to human rights organizations.

³⁸ UNHCR Detention Guidelines, Guideline 5.

³⁹ See the ruling of the Canadian Supreme Court disqualifying a mechanism for review that failed to provide the required guarantees for a fair proceeding in the detention of unlawfully present persons, including asylum seekers: *Adil Charkaoui v Minister of Citizenship* [2007] 1 S.C.R. 350, 2007 SCC 9, dated 23 February 2007.

⁴⁰ UNHCR Detention Guidelines, Guideline 3(iv).

⁴¹ Article 26 of the UN Convention Relating to the Status of Refugees. For further detail on this aspect, see the text by footnotes 13 through 16 above.

⁴² See the ruling of the New Zealand Supreme Court in *Zaoui v Attorney General*, Dec. SCCIV 13/2004 (NZ SC, Nov. 25, 2004).

The growing number of complaints also led to the collapse of this system within just a few months. As of the date of publication of this policy paper, Eritrean asylum seekers who are released from detention after being identified as citizens of Eritrea by the UN High Commissioner for Refugees are released without the imposition of conditions “shackling” them to a specific employer in a specific moshav.

Arrest Campaign and Geographical Restriction as a Condition for Release

From the above description of developments, it is not difficult to discern a pattern of inconsistency regarding the detention of asylum seekers. Policy depends mainly on the whims of officials at different levels. In February 2008 this situation reached an absurd level. Following media reports on the distress faced by asylum seekers living in shelters in Tel Aviv,⁴³ and after the prime minister ordered that arrests and deportation be used immediately to tackle the refugee issue, a large-scale campaign was launched to arrest asylum seekers, most of whom held protective documents from the UN High Commissioner for Refugees, contrary to the arrangements applying at the time.

According to the UN High Commissioner for Refugees, the format of these documents was established with Israel’s agreement, and it was agreed that asylum seekers holding such documents are not to be arrested. Despite this, at the end of February 2008 and the beginning of March, the Migration Police raided shelters where hundreds of asylum seekers were living. Most of the asylum seekers were arrested. Those holding documents from the Commissioner were eventually released, but only after each one was identified individually by the Commissioner. As a result, some asylum seekers were left in detention unnecessarily for many week. Those eventually released from detention were placed under a new custody order; one of the conditions of release is that they must remain solely to the north of Hadera or to the south of Gedera (i.e. not in central Israel). As noted, restricting the freedom of movement of refugees (including asylum seekers) is inconsonant with Israel’s obligations in accordance with the convention.

The purpose of these actions, it seems, was to create an atmosphere of intimidation against asylum seekers in Israel. The actions were also intended to address the large concentration of asylum seekers that had developed in Tel Aviv; in the absence of work permits, some of the asylum seekers were living in public shelters in extremely harsh conditions.⁴⁴ The immediate catalyst leading to the arrest of the asylum seekers and the conditioning of their release on their leaving Tel Aviv seems to have been the critical newspaper articles revealing the harsh conditions in the shelters, which seriously embarrassed Israel and depicted its attitude to refugees as apathetic.

Rather than attending seriously to the problems that had emerged, the authorities preferred to take the drastic step of detaining asylum seekers and establishing conditions for release (violation of which will lead to repeat detention) in order to disperse the asylum seekers, thus rendering them less visible and removing them from centers that had led to public and media interest. The move also distanced the asylum seekers from human rights and assistance organizations, whose activities and infrastructures are concentrated in the center of the country.

⁴³ Nurit Werghaft, “Kutchik Moves in on the Refugees,” Ha’aretz, 18 January 2008; Kibriv Kaldatinsa, “Lower Tel Aviv, The Boulevards,” Yediot Tel Aviv, 25 January 2008; Hila Kovo, “The Lowest Place,” Zman Tel Aviv, 25 January 2008; Hagai Matar, “Africa – Israel,” Ha’ir Tel Aviv, 25 January 2008; Yigal Hai and Michal Greenberg, “No Room in Tel Aviv; Refugees Move to Givatayim and Bat Yam,” Ha’aretz, 7 February 2008.

⁴⁴ See the comments by the head of the Population Administration at a meeting of the Knesset Foreign Workers Committee, 26 February 2008: <http://knnesset.gov.il/protocols/data/rtf/zarim/2008-02-26.rtf>.

The expulsion of asylum seekers from Tel Aviv by means of detention and release under geographic restrictions was undertaken on an indiscriminate basis against all asylum seekers encountered by the Migration Police during their raids in Tel Aviv. Even asylum seekers who had found work and were living independently in Tel Aviv were expelled, as were unaccompanied minors and the parents of young children who had already found places in the education system in Tel Aviv.

“Hosting Camp” and the Detention of Children

Until July 2007, minor asylum seekers who entered Israel with their parents were not detained. To this day, the majority of child asylum seekers who arrived with their parents have not been detained and have been placed in the education system. However, in keeping with the capricious approach of the decision makers in these matters, and in response to fleeting media pressure, it was decided at the beginning of July 2007 to establish a detention camp in Ketsiot (referred to by the authorities as “a temporary hosting facility.”) The camp was to be used for the imprisonment of asylum seekers – or “infiltrators,” to use the state terminology – including children.⁴⁵

The detention camp was established immediately, without appropriate preparations or organization. At first, detained children were held together with their mothers in the caravan section of Ketsiot Prison. In October 2007, however, a new compound was established adjacent to the prison, known as the Saharonim facility. This facility includes six wings – large, fenced tent camps four of which hold approximately 800 male asylum seekers, and two of which holds some 200 mothers and children.

The living conditions in the tents, each of which houses 15-20 detainees in a limited space, are far from satisfactory. The facility is situated in a desert region with harsh climactic conditions in summer and winter. During most of the past winter there were no means of heating in the facility, despite the fact that temperatures sometimes fell to -5 degrees Celsius. The detainees did not receive sufficient blankets, and some of the tents leaked when it rained. Only after a petition was submitted against the conditions of detention were means of heating installed in some of the tents, though reports from detainees suggest that in the harsh desert conditions, and in canvas tents, these were not able to overcome the piercing cold. The children held in the facility included small infants, some of whom were born while their mothers were in detention; they, too, were exposed to the extreme cold in the facility.

In the summer Ketsiot is one of the hottest places in Israel. There are no means in the tents for protecting the asylum seekers against the heat. The Israel Prison Service has stated that it is currently working to transfer the detainees to permanent buildings, but these will not be ready before January 2009 (and probably later still).

As if this were not bad enough, the child detainees do not receive psycho-social support, despite the fact that many of them have experienced serious trauma in their country of origin and during their journey to Israel. For many of them, the experience of imprisonment is also liable to have grave ramifications. A single social worker is employed in the Saharonim facility – a uniformed man who does not speak the language of the asylum seekers held in the facility, and who is responsible for some one thousand detainees. The social worker does not provide psycho-social support; his function is confined mainly to arranging meetings between family members held in different wings of the facility, and coordinating the activities of bodies that run various types of activities in the prison.

⁴⁵ See the announcement of the Prime Minister's Office dated 1 July 2008 at the following link: <http://www.pmo.gov.il/PMO/Communication/Spokesman/2007/07/spokedar010107.htm>.

Ketsiot lacks appropriate educational facilities. The children are divided into three broad age groups, in each of which the age difference can be as much as six years. Teachers come to the prison for a few hours a day to run activities. There are no proper classrooms; the children sit in large tents, on plastic chairs around a single table, without educational aids. There is no curriculum, no systematic monitoring of the students' progress, and no real continuity in their studies.

The children are detained without any date being set for their release, and they face constant uncertainty. Their detention is particularly outrageous since, for the present, they cannot be deported from Israel since they are citizens of Eritrea and Sudan. Moreover, their detention is completely arbitrary. Most child asylum seekers who arrived in Israel with their parents were released unconditionally. The only reason why one child is detained and another is not is the date on which he entered Israel – after the establishment of the imprisonment facility for children, and on a day when the facility was not completely full.

The Story of Bol, a Child Refugee from Southern Sudan

My name is Bol. I am twelve years old. I am a Christian from Southern Sudan.

I entered Israel from Egypt in July 2007 together with my parents and my two brothers. We were arrested immediately, and since then we have been waiting at Ketsiot Prison until the United Nations decides whether we are refugees.

For the first three months we slept in caravans. Two months ago they moved all the women and children to other wings where we live in tents. I am in wing number 1 of the women and children.

I sleep on an army bed and cover myself with thin wool blankets. It is very cold at night and it is hard for me to sleep. We sleep in crowded tents and there are no means of heating. The showers we use are the same for boys and girls.

There are no studies here. I do not really know what a social worker or a mental health worker is, but I don't think I have met anyone like that here. The only people I see here are the wardens with their handcuffs and weapons.

The wing we are in is surrounded by two fences. One is white and opaque, the other is an internal metal fence. The floor here is made of concrete and the tents are made of canvas. The wind passes right through them, and that's why I am cold.

I don't have anything to do here. There are two swings but they don't interest me. I just hang around all day. Sometimes I argue a bit with the other children. I really do not like to be here and I would like to be somewhere else. I don't know where because I don't know anywhere in Israel. Since we got here I have not left the wing we are being held in even once.

In January 2008 several human rights organizations petitioned the High Court of Justice, arguing that child asylum seekers should not be detained; alternatively, they argued that the conditions of detention at Ketsiot Prison are not suitable for children.⁴⁶ During the course of the hearings the request not to detain child asylum seekers was deleted, and in February 2008 the petition was rejected. Although the Supreme Court accepted the argument that the conditions of detention included problems demanding immediate attention, particularly in terms of education and protection from the elements, the petition was rejected in view of the state's position that it encountered difficulties preparing for the detention of child asylum seekers within a short period of time. It should be noted that at the time of writing, several months after the grave ruling was given in this matter, there has been no change in the conditions of detention in the facility. The only change that occurred following the petition is the decision by the Israel Prison Service to restrict significantly entry by personnel from the organizations that submitted the petition into the wings in which the asylum seekers are

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HCI 212/08 Hotline for Migrant Workers et al. v Israel Prison Service.

housed. By so doing the authorities are restricting the access of human rights organizations to detainees, denying assistance to hundreds of asylum seekers who require it.

The restrictions imposed by international law regarding the detention of children in general, and child asylum seekers in particular, are stricter than those applying to the detention of adult asylum seekers. Israel is violating these restrictions on a systematic basis. The 1989 Convention on the Rights of the Child establishes that “the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”⁴⁷ These provisions apply to all children, not only asylum seekers.

The guidelines of the UN High Commissioner for Refugees specifically establish that child asylum seekers are not to be detained, and that every possible alternative to detention should be considered.⁴⁸ The Convention on the Rights of the Child also establishes provisions regarding the obligation to provide special protection for child asylum seekers.⁴⁹

In addition to the act of detaining asylum seekers in Ketsiot, including children, Israel is also ignoring its obligation to provide every detainee with appropriate conditions of imprisonment ensuring his dignity, in accordance with Israeli law⁵⁰ and international law.⁵¹ In addition to the general provisions relating to the conditions of detention of all detainees, international law also establishes guidelines defining special conditions for children who have been deprived of their liberty. These include conditions ensuring their dignity and health; sleeping arrangements in small groups; protection of their right to privacy, among other means by enabling them to hold personal items; and ensuring their right to proper psychological development. All these guidelines are violated in the case of the children held at Ketsiot Prison.

In view of the standard of educational services in the facility, it may be determined that the detention of children in Ketsiot also entails the violation of their right to education. Israeli law recognizes the right of every child present within the borders of the state to educational services on an equal basis, even if he and his parents are present in Israel without permit.⁵² International law also requires that education be provided for all children equally and regardless of their status.⁵³

As for the children of refugees, the Convention Regarding the Rights of Refugees requires that refugee children receive the same elementary education as is enjoyed by the residents of the absorbing country. Concerning post-elementary education, the state is obliged to provide the children of asylum seekers with education on the highest possible level and, in any case, at a level not lower than that enjoyed by other foreign nationals present in the country.⁵⁴ Israel

⁴⁷ Convention on the Rights of the Child, Article 37(b). The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, adopted in Resolution 45/113, establish the same provisions; these rules were adopted by the UN General Assembly on 16 December 1990.

⁴⁸ UNHCR Detention Guidelines, Guideline 6.

⁴⁹ Article 22 of the Convention on the Rights of the Child.

⁵⁰ See, for example, H CJ 4634/04 Physicians for Human Rights v Minister of Internal Security (ruling dated 12 February 2007); H CJ 3278/02 HaMoked Center for the Defence of the Individual v Commander of the Israel Defense Forces in the West Bank Area, *Piskei Din* 57(1) 385, 397-398.

⁵¹ Article 10(1) of the International Convention on Civil and Political Rights.

⁵² H CJ 322/87 Ben Shlomo v Interior Minister, *Piskei Din* 33(3) 353, 356; Circular of the Director-General of the Education Ministry, 5760/10(A) dated 1 June 2000. Regarding this right in American law, see the ruling of the US Supreme Court in *Plyler v Doe*, 457 US 202 (1982).

⁵³ See Article 28 of the Convention on the Rights of the Child, which discusses the right of children to education; and Article 2(1), which discusses the right of every child to enjoy the rights set forth in the convention without any discrimination. See also Article 13 of the International Convention on Economic, Social and Cultural Rights.

⁵⁴ Article 22 of the UN Convention Relating to the Status of Refugees.

provides elementary and high-school education for the children of migrant workers present in Israel without permit, on the same standard as it provides for its own citizens, and it undoubtedly also bears an obligation to provide such education for refugee children. Again, this obligation applies not only to children recognized as refugees, but also to those whose requests for asylum are still being examined.⁵⁵

International law also addresses obligations relating to the quality of education to be provided for children held in detention. Among other requirements, such education is to be provided outside the prison facility, in public schools whenever this is possible and, in any case, by professional teachers and in accordance with curricula that are integrated in the general education system of the state. Particular attention is to be paid to the education of foreign children with special cultural needs; illiterate children of children with learning difficulties are entitled to special education; every child is to enjoy access to a library with suitable reading material; and detained minors must be enabled to participate in activities promoting and protecting their health and self-esteem, nurturing their sense of responsibility, and encouraging skills that will help them in society.⁵⁶ As will be readily appreciated, Israel is violating these obligations in a gross manner.

Israeli law recognizes the importance of providing psycho-social support for detained minors.⁵⁷ International law also recognizes this aspect, establishing that the personnel of an imprisonment facility holding children must include educators, consultants, social workers, psychologists, and psychiatrists in sufficient quantity and employed on a permanent basis; that the personnel of an imprisonment facility holding children must undergo training, including child psychology, child welfare, and international standards regarding human rights and the rights of the child; and that as soon as possible after a child is admitted to a detention facility, he should be interviewed and a psychological and social report prepared in his case.⁵⁸ None of these provisions are maintained at Ketsiot Prison.

⁵⁵ J.C. Hathaway, *The Rights of Refugees under International Law*, (Cambridge University Press, 2005), p. 597.

⁵⁶ United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (footnote 47 above), sections 12, 38, 41, and 59.

⁵⁷ CA 6569/05 Ahmad Abu Aliash v State of Israel (ruling dated 24 July 2006); CA 10118/06 Anonymous v State of Israel (ruling dated 30 April 2007).

⁵⁸ United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (footnote 47 above), sections 27, 81, and 85.

Recommendations

As is clearly shown by the above review of Israel's behavior regarding the detention of asylum seekers and refugees, Israel has systematically trampled on their right to liberty. In so doing, Israel has also violated a series of additional basic rights. In view of this reality, the Refugees' Rights Forum presents the following summarized recommendations:

- As a general rule, refugees and asylum seekers should not be detained, otherwise than in exceptional cases when this is essential in order to secure one of the three primary goals in the UNHCR Guidelines: When detention is required for the purpose of establishing identity, undertaking a preliminary interview, or when the asylum seeker has destroyed his identifying documents or has used forged documents to mislead the authorities of the country in which he intended to request asylum (if these actions were committed deliberately and with the **intention of misleading or defrauding** the authorities). Even in these cases, it must be considered whether the purposes detailed in the guidelines can be secured by other means; detention should be employed solely as a last resort.
- Detention mechanisms established in migration laws should not be used to detain asylum seekers allegedly presenting a danger to public well-being or to state security. Insofar as such suspicions exist, the state must use the same legal means as are applied against its residents.
- A maximum period of one to two weeks should be set for the detention of asylum seekers, in exceptional circumstances, in order to secure one of the goals detailed in the first recommendation, and when these goals cannot be secured otherwise than by detention.
- For as long as the current asylum system remains intact and it is impossible to undertake a preliminary interview with an asylum seeker within a few days of arrest, asylum seekers should not be held in detention pending such an interview. Asylum seekers may be detained for a minimal period in

order to obtain their details and transfer them to a body empowered to interview them and consider their asylum request.

- Every asylum seeker should be issued with a document enabling his immediate identification in the case of contacts with enforcement authorities, in order to prevent protracted questioning or detention in order to clarify the identity of asylum seekers and the state of the asylum proceedings in their case.
- Written guidelines must be established, formalized in procedures or regulations, for police officers and other enforcement personnel, detailing the significance of each document held by asylum seekers and the prohibition against their detention.
- An asylum seeker is not to be considered to be “failing to cooperate” with his deportation merely because he requested asylum in Israel. Neither is any sanction to be imposed on asylum seekers as the result of their asylum request.
- Asylum seekers are not to be subjected to discrimination on the basis of their country of origin, or on the basis of any other distinction, in proceedings relating to the denial of their liberty. Different treatment of asylum seekers who are defined as the subjects of “enemy states” or ‘hostile states” shall be considered discrimination.
- Asylum seekers detained for a short period of time for an essential purpose accruing from one of the above-mentioned grounds shall not be detained under the Prevention of Infiltration Law. In any detention procedure the authorities shall ensure due rights, translation, access to representation, periodic review, and the right of appeal.
- Conditions of release shall not be established that restrict asylum seekers in geographical terms or restrict them to a single employer.
- The detention of asylum seekers shall be solely in appropriate conditions ensuring their dignity, and separate from criminal detainees or prisoners.
- International and domestic assistance organizations, human rights organizations, and the UN High Commissioner for Refugees shall be

allowed access to the places of detention of asylum seekers. This must be ensured by enabling the organizations to visit the imprisonment facilities, as well as by enabling detainees to initiate contact with the organizations by telephone. Detainees are to be given information and contact details in their language regarding the various organizations and the UN High Commissioner for Refugees.

- Detained asylum seekers shall be entitled to receive visitors. Asylum seekers whose relatives are being held separately shall be entitled to meet their detained relatives on a frequent basis.
- Asylum seekers shall not be held in detention, even temporarily, in military bases, and their detention shall be conditional on legal documentation permitting detention.
- Child asylum seekers shall not be detained. When children cross the border they are to be held at a special center established to absorb asylum seekers as detailed in the recommendations of the policy paper on the subject of social and economic rights.

The "Refugees' Rights Forum" consists of the eight Human Rights Organizations active in promoting the rights of refugees and asylum seekers in Israel, as well as implementing activities on their behalf. The aim of the group is to work together to find strategies for dealing with changing realities on the ground and on the governmental level. The Forum was established with the assistance of the *New Israel Fund* in order to develop in-depth policy papers which relate to all aspects of refugee protection and rights, including long terms solutions. The Forum's objective is to achieve legislation which addresses the legal and moral obligations that Israel has committed to by signing the International Refugees Convention. These obligations are based on the values of democracy and human rights.

The Association for Civil Rights in Israel (ACRI) is Israel's oldest and largest human rights organization, and is dedicated to protect the entire spectrum of human rights of all people in Israel, the occupied territories, and all places that human rights are violated by the Israeli authorities. ACRI advances human rights through a wide range of legal, public outreach and educational activities.

The Hotline for Migrant Workers is a non governmental, not for profit association, dedicated to protecting the rights of migrant workers and refugees and eliminating human trafficking in Israel. Our activities include providing information, offering consultation services and legal representation, heightening public awareness, and promoting public policy that eliminates modern slavery in Israel.

Physicians for Human Rights-Israel (PHR-IL), established in 1988, is committed to ensuring human rights, and the right to health in particular, for all individuals living in Israel and the Occupied Palestinian Territories. PHR-Israel promotes the equal right to health through advocacy work, legal action, lobby work, awareness raising and publications. In addition PHR-Israel provides medical aid through volunteer clinics.

The Refugee Right Clinic is a legal aid and advocacy program devoted solely to refugees. Situated at the Tel Aviv University Buchmann faculty of Law, the Clinic is devoted to the teaching, researching and practicing of refugee law. Operating since October 2003, the Clinic provides free legal aid to dozens of asylum seekers and refugees every year in a variety of issues. In addition, the Clinic advocates the implementation of a fair asylum policy in Israel.

Amnesty International is an international organization aimed at preventing human rights abuses. ***Amnesty Israel*** is active in ensuring the rights of asylum seekers and refugees in Israel by campaigning on the public, parliamentary and governmental levels. The organization works to educate the public and decision makers in Israel in order to make them stand up to their obligations.

ASSAF – Aid Organization for refugees and asylum seekers was founded in the beginning of 2007 in order to fill a gap in psychosocial assistance to refugees and asylum seekers in Israel. ASSAF provides emergency humanitarian assistance, psychosocial assistance and community empowerment.

The African Refugee Development Center (ARDC) founded in 2004, is a registered non-profit organization established to assist, support and empower the African refugees and asylum seekers in Israel and to promote a humane and fair Israeli asylum policy. ***ARDC*** represents refugee communities from close to ten countries from East, Central and West Africa. ***ARDC*** divides its work between humanitarian and direct service provision, individual casework, advocacy and work to enhance community building among refugees.

Kav LaOved (Worker's Hotline) is a nonprofit non governmental organization committed to protecting the rights of disadvantaged workers employed in Israel and by Israelis in the Occupied Territories, including Palestinians, migrant workers, subcontracted workers and new immigrants. Kav LaOved is committed to principles of democracy, equality and international law concerning human and social rights.