

Policy Recommendations for Migration and Asylum Seekers in Israel

Ruppin Academic Center Task Force

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Executive Summary:

The following recommendations aim toward legislation of a new migration law for Israel that will improve the treatment of asylum seekers in Israel.

The recommendations focus on four issues:

- The existing situation that inhuman conditions exist within the State of Israel which was born on and dedicated to the proposition of immigration for survivors.
- Asylum seekers from certain countries currently enjoy the status of temporary group protection, which grants them the legal right to remain in the country. However, this status is not accompanied by rights or official assistance to provide a basic standard of living. This situation, unique to Israel among all states of the industrialized world, damages both the state and the asylum seekers.
- Individuals under temporary group protection should enjoy basic social rights, A right to health services, and the right to work.
- The serious ramifications of the planned Israeli policy of imprisonment have been experienced by other countries, who have responded by limiting incarceration within their borders. The imprisonment of 10-11,000 persons is expected to cost over Billion NIS (the cost is equivalent to about 20% of Israel's welfare budget). This document outlines the consequences of this policy and recommends a number of alternatives.

The Task Force recommendations seek the following goals:

1. To ensure reasonable living conditions for asylum seekers under temporary group protection - granting of work visas, health insurance, education and training.
2. To correct dysfunctions in the process of determining refugee status today in Israel, ensuring Israel's commitment to the refugee convention, to due and expedient process and to provision of legal aid or other assistance to petitioners in process.
3. To propose alternatives to detention, and to define the circumstances in which such means are applicable while the asylum request is processed.
4. To restructure the organization of the government authorities involved, and to streamline division of labor among them.
5. To offer suggestions for combating racism toward asylum seekers.

Background

Current migration policy in Israel focuses on regulating the immigration of Jews and does not provide sufficient guidance to regulate the status of others living within its borders. In the absence of migration policy, current legislation empowers the Interior Minister to reject and forcibly expel any individuals who are not entitled to permanent status according to the Law of Entrance to Israel and the Law of Return. Currently, about a quarter million foreigners, i.e. individuals who are not citizens of Israel or legal permanent residents, live in the country. According to the Interior Ministry's Population and Migration Authority (as of August 2012), about 47,000 of them are migrant workers who live in Israel with work visas (not including agricultural workers regarding whom updated information is unavailable). About 14,000 are migrant workers who have overstayed their work visas; about 92,000 are tourists (who entered the country without work visas and whose tourist visas have expired); and about 62,000 are asylum seekers who entered Israel through the border with Egypt (Population and Migration Authority 2012). About 53,000 asylum seekers cannot be expelled under international law, and Israel is obligated to protect them and provide for their welfare.

While Israel works to prevent the entrance of more asylum seekers, the state does not adequately handle those already present within her borders. Despite the existence of a framework for examining requests and granting refugee status, the Interior Ministry does not permit asylum seekers today to access this framework. As an alternative, asylum seekers from Sudan, Eritrea and Congo hold temporary group protection. Israel pays a heavy price for this situation, in social, economic and legislative terms. For example, as of February 2012, planning and construction of a

detention facility in the South was expected to cost 250 million NIS¹. The plan to imprison 11-12,000 asylum seekers is expected to cost the state about 1 billion NIS per year, based on an estimated cost per prisoner of 95,000 NIS per year.²

These recommendations focus on the need to determine a consistent policy that will enable the State of Israel to fulfill its obligations toward asylum seekers. The recommendations address the status of temporary group protection, the determination of refugee status, and the general issue of asylum seekers.

Guidelines for determining the status of asylum seekers in Israel

Two approaches characterize the actions of responsible states that recognize their responsibilities toward asylum seekers: processes for determining individual refugee status (RSD), or granting of temporary group protection. The first approach is based on examination of the personal circumstances of each candidate for refugee status. The second approach is based on a broad directive to temporarily protect a group of asylum seekers, usually based on country of origin or circumstances of arrival (war, for example). The UNHCR defines those entitled to group protection as people in a refugee-like situation. These two approaches include the responsibility to guarantee human rights to these individuals. The State of Israel grants most asylum seekers in its territory temporary group defense. This status, **which is mainly used by underdeveloped countries**, prevents their expulsion but leaves them without even the basic means to support themselves. According to the Knesset Research and

¹ According to Protocol 75 of the special committee for examining the issue of foreign workers.

² Alternatives for detention implemented in other countries, such as housing the asylum seekers in the community or in living centers (for example, in Denmark) are the most cost-efficient and humane (UNHCR, 2011).

Information Center, **Israel is the only country among industrialized states in the OECD that makes broad use of temporary group status.**³

³ G. Natan (2011). Non-Israelis in Israel (foreigners, foreign workers, refugees, illegal infiltrators, and asylum seekers), status in 2010-11. Knesset Research and Information Center, p. 12.

List of Recommendations (see next section for rationales and detail)

Living Conditions under TGP (Temporary Group Protection):

1. The status of Temporary Group Protection cannot be a replacement for filing a request for refugee status. However, as long as TGP applies, the state bears an obligation to ensure the right of asylum seekers to reasonable living conditions. This right can be realized in one of two ways: first, by direct state funding of all the needs of the asylum seekers; and second, by assuring the right of asylum seekers to work and thereby secure their social welfare rights.⁴ Detention of about 53,000 people for a period of at least three years is not economically realistic, and harms the realization of their rights under international law. Therefore, integration of asylum seekers in the labor market is the most efficient and preferred alternative.

1.1. In order to prevent competition between asylum seekers and other residents of Israel (such as occurs with the legal participation in the labor market of Palestinians from the PA and workers from other countries), we recommend considering limiting the right to work of asylum seekers to sections of the economy that suffer from worker shortages.⁵

1.2. For holders of Temporary Group Protection or refugee status, we recommend granting the right to open independent businesses in accordance with Israeli law.

1.3. Should it prove necessary to encourage asylum seekers to integrate into the Israeli labor market, we recommend granting immunity from expulsion for five years to those who work, a period of time identical to that allocated for legal migrant workers in Israel.

⁴ In the European Union, asylum seekers are eligible for the following rights, until their status is verified: housing, food, and clothing, information about rights, freedom of movement, family life, access to the labor market, access to the health systems, education, access to legal consultation, assistance in case of disability or special needs, including non-accompanying minors (Natan, 2012).

⁵ In Germany, for example, asylum seekers are employed in jobs that Germans or European citizens are not interested in performing (Natan, 2012).

2. Granting of Temporary Group Protection status must ensure access to basic health insurance (at least at the level enjoyed by migrant workers). Realizing this right does not necessarily entail the creation of a new health insurance plan for asylum seekers.

3. Accompanied and unaccompanied minors who are asylum seekers and enjoy Temporary Group Protection must be guaranteed the right to education equal to that of residents of Israel and its citizens.

3.1 Adult asylum seekers should be encouraged to further their education. First and foremost, they should learn Hebrew, which will make it much easier for them to conduct their affairs in Israeli society and reduce the alienation that naturally accompanies their situation. In Denmark, adult asylum seekers are required to participate in language courses as well as in professional training (Natan, 2012). The Danes also conduct courses to assist asylum seekers in returning to their home countries.

4. Prior to the removal of Temporary Group Protection status from a defined group, the government of Israel must ascertain that conditions in their home country have fundamentally improved, and that the new conditions are stable, ongoing and valid in accordance with the requirements of international law.

4.1 Asylum seekers protected under Temporary Group Protection must be given sufficient time to prepare to return to their home countries when the protection status is withdrawn. For that purpose we recommend a period of four months before they can be expelled from Israel.

Obtaining Refugee Status

5. Israel must make the process of obtaining refugee status accessible to all asylum seekers, including those currently enjoying Temporary Group Protection status, and make the process more efficient and fair than it is today.

5.1. The State of Israel was one of the initiators and formulators of the International Treaty on the Status of Refugees from 1951. Israel signed and ratified it along with the accompanying protocol from 1967. Therefore, it is appropriate for the State of Israel to make the Treaty an integral part of Israeli law.

6. Receipt of Temporary Group Protection status is not a replacement for submitting a request for refugee status.

6.1. We recommend that the examination process for requests for refugee status should be limited in time. We suggest a maximum four-month period from the date the request is filed until a response is given, including the reasons behind it.

6.2. If the process takes longer than four months as per the law, a candidate will receive assistance either directly or through a temporary work visa in order to guarantee his/her ability to support his or her self.

7. Throughout the process of determining refugee status, applicants must be assured the right to proper legal representation, at government cost, on the basis of the right to legal representation and the accepted norms in the State of Israel for other legal processes.

7.1. Asylum seekers who are not interested in legal representation must be permitted the assistance of another adult of their choice. These representatives will be authorized to present arguments at the opening and closing of interviews in the Interior Ministry. Such a representative should not be allowed to accept monetary or

other remuneration from the asylum seeker or anyone else, but may be a voluntary activist in a relief organization.

8. The official carrying out the Refugee Status Determination interview must be empowered to decide in the matter of the petitioner with whom he meets. The petitioner should have the right to appeal a negative decision by the Interior Ministry within two weeks following the decision, either due to changes in circumstances or out of concern that a mistake was made in the process of the interview or the decision made.

8.1. Interviews with the asylum seeker will be recorded electronically and made available to the asylum seeker or an attorney representing him, within seven days of the interview.

8.2. Appeal of a denial of asylum status must be heard by a different official from the one whose decision is being appealed, one who is authorized to conduct such interviews. The results of the re-examination will be one of the following: rejection of the appeal, acceptance of it, or the opening of a new process for the petitioner. The process of examination of an appeal will not extend beyond than thirty days. An appeal may be lodged at any stage (if there is more than one) of the process of acceptance or rejection of refugee status in Israel.

8.3. An appeal of a decision regarding asylum status on an administrative level will be liable to judicial review by a court. The right to appeal, whether to another administrative official of the Interior Ministry or to a court, shall be granted while the petitioner is still in Israel and in accordance with the rules of procedure of the Israeli legal system in this matter.

8.4. The final decision regarding a petition for individual asylum will take into consideration the relevant international conventions, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8.5. The state must allocate sufficient resources to allow the relevant authority to carry out RSD according to the aforementioned conditions. According to the representative of the UNHCR in Israel, some 60 interviewers will have to be trained to conduct interviews for asylum seekers applying for refugee status.

8.6. Upon receipt of refugee status in accordance with all relevant criteria, the asylum seeker will have the right to bring his/her family (spouse and children) to Israel and/or to protect their status if they are already in Israel.

9. Refugee status will be granted for a period of three years, at the end of which it will be reconsidered. Re-examination of the refugee's status will be under the same conditions as the original process. If a decision is made to revoke refugee status (after an appeal, if necessary, according to the original process) the individual involved will be given a period of six months to organize his/her departure from the State of Israel with his/her family members.

Detention/Incarceration

10. The Law for the Prevention of Infiltration will not apply to asylum seekers.

11. The goal of detention should be the determination of the identity of the migrant/detainee, and evaluation of whether he/she constitutes a security threat to the state. We recommend limiting detention to a period of two to four weeks at most. This detention must be used only as a final resort, as determined in the UNHCR guidelines regarding detention of asylum seekers, and it must be fixed in law and carried out only when necessary, logical, and proportionate and for a legitimate purpose.

Inter-Ministerial Responsibility

12. Clear delineation of areas of responsibility must be established for the relevant government ministries (Interior, Foreign Affairs, Health, Social Welfare, Education, Employment), for addressing the challenges of immigration of asylum seekers.

12.1. We recommend establishment of a single authority to allocate resources and enforce responsibilities of the various offices.

Prevention of Racism toward Asylum Seekers

13. The State of Israel and its representatives must act to reduce confusion of terms by differentiating between refugees and asylum seekers protected under international law and the convention on refugees from 1951, and migrant workers or “infiltrators.”

13.1 The state must prohibit the use of expressions of racism and incitement, and enforce this prohibition. Israel must adopt the guidelines for a policy on xenophobia as formulated by the UNHCR.

14. Israel must refrain from creating “ghettos” of migrants such as exist today (for example, in South Tel Aviv). The attraction of South Tel Aviv lies in the relatively easy access to cheap housing and community services in the area. Similar conditions must be made available in other areas in Israel.

14.1 If the concentration of asylum seekers in certain areas nevertheless continues, the state must allocate sufficient dedicated resources to address the needs of the host community/neighborhood and the asylum seekers together. Weak communities with insufficient social welfare services should not be required to share those inadequate services with others, without assistance.

The Rationale behind the Task Force's Recommendations:

Rationale for Recommendation 1: Asylum seekers must have the right to work in order to ensure their social rights.

In certain circles in Israeli society, the granting of basic social rights and the opportunity to work to those protected by Temporary Group Protection are seen as steps that will raise motivation to immigrate here. However, this concern is baseless (Block and Schuster, 2002; Havinga and Boeker, 2010). In Scandinavia, for example, despite efforts to limit the social services granted to asylum seekers, the number of asylum seekers did not decline. Similarly, the countries of southern Europe, not noted for broad social services, wrestle with a growing wave of asylum seekers. As a practical matter, encouraging the integration of asylum seekers in the labor market and ensuring their social rights as workers can contribute to the state in two ways. On the one hand, it creates active and productive participation in the local economy. On the other, it involves economic responsibilities such as payment of taxes, including medical and social insurance fees. Should individuals enjoying Temporary Group Protection participate in the tax burden, they will provide for funding the rights mentioned above. In accordance with this principle, recommendations made to the EU for improving the asylum policy of its states propose shortening the period in which asylum seekers are forbidden to join the workforce (Natan, 2012). An important advantage to granting work visas to asylum seekers is the reduction of the phenomenon of the "revolving door" that imports foreign workers and then replaces them, from which, the only bodies that profit are manpower contractors in Israel and overseas.

Rationale for Recommendation 2: Temporary Group Protection status must guarantee the right to basic health insurance.

Today, asylum seekers' right to medical treatment in Israel is based solely on the Patients' Rights Law, which states that medical treatment must be given in "circumstances where a person is in immediate danger to his/her life, or faces an immediate danger of irreversible serious disability unless he/she receives urgent medical care." However, under these criteria, psychiatric or physical problems go untreated, and individuals cannot obtain appropriate medical follow-up. This represents a danger to the asylum seekers as well as to their immediate environment. The economic dimension of failing to provide medical care to asylum seekers is significant. Hospitals today absorb the costs of urgent care (unrecovered debts), which harms them financially and limits their ability to provide appropriate services to all the sick. Instead, regular or preventive care for non-urgent illnesses such as colds and flu would limit the need for expensive emergency treatment. Estimates of lost debts of hospitals that treat asylum seekers reach hundreds of thousands of NIS (Natan, 2011: 21) For example, the unrecovered debts of Ichilov Hospital come to about 50 million NIS, according to the evidence given by Mrs. Shoham of Physicians for Human Rights at the Knesset Committee for Examining the Problems of Foreign Workers (Protocol #88).

Rationale for Recommendation 3: Minor asylum seekers must be guaranteed the right to education at an identical level to which residents of Israel and its citizens are entitled, and adult asylum seekers should be encouraged to obtain education and professional training.

Minors are a minority among asylum seekers currently under Temporary Group Protection in Israel. According to the Knesset Center for Information and Research, 453 minors entered Israel in 2011. Despite this, we encourage the implementation of the decision of the High Court of Justice to integrate the children of asylum seekers in existing educational frameworks, with the intention of encouraging broad human

variety and tolerance among children. This will benefit both asylum seekers as well as other Israelis as well as ensure the quality of education to which minors among the asylum seekers are entitled.

Rationale for Recommendation 4: Asylum seekers must be granted a period of four months to prepare for return to their countries.

The status of Temporary Group Protection should be exactly that - temporary. It is conditional on changes in the home country situation such that asylum seekers can return without danger. In addition, the state is obligated to recognize that these asylum seekers have lived in Israel for a lengthy period, and therefore they should be given assistance for proper preparation for their departure from Israel.

Rationale for Recommendation 5: The State of Israel must provide interviews for refugee status determination (RSD), and streamline the procedures involved.

Only 0.25% of asylum seekers have received refugee status in Israel. As Natan notes (2012), in the EU, the number is 25%. Between 2010 and 2011, the world-wide rate was 30%, or even higher if we add those who successfully appealed the rejection of their requests.

Rationale for Recommendation 6: Temporary Group Protection status is not an alternative to filing a request for receipt of refugee status.

The small number of asylum seekers in Israel who are recognized as refugees (see above) raises many questions about the fairness of the process of granting refugee status in Israel and its normative basis. One of the failures in today's RSD process in Israel is that the handling of requests for refugee status by individuals under TGP is automatically delayed to an unknown date (which in fact does not exist). In other countries (for example, Holland), four months is a sufficient period of time to

examine the identity of a candidate, including whether he/she meets the relevant criteria determined by international law. Migrants who wish to arrive in Israel under a false pretense of refugee hood will refrain from coming to Israel if they know that the status determination process will lead to their expulsion within a short period.

Rationale for Recommendation 7: The State of Israel must grant the right to proper legal representation.

The process of RSD may be decisive in questions of life and death, and therefore broad legal protection and legal aid are imperative.

Rationale for Recommendation 8: The State must improve the RSD system and the right to appeal.

In its current state, the RSD system in Israel does not provide an appropriate solution to asylum seekers. A high-quality, efficient system will assist the State of Israel in developing clear policies toward asylum seekers that will serve Israel's interests and the interests of the asylum seekers while meeting international standards.

Rationale for Recommendation 9: Refugee status will be granted for a period of three years, after which it will be subject to reconsideration.

After living in the State of Israel for three years, asylum seekers whose status has been withdrawn or changed must be enabled to end his/her connections with the State of Israel without harm to his/her rights or those of his/her family.

Rationale for Recommendation 10: The law against infiltration should not apply to asylum seekers.

Those who enter Israel without permission and immediately express their desire for asylum should not be immediately considered violators of the law. Entrance into

Israel, as to any industrialized country, is legal under the criteria of international law. The strict stance that Israel takes toward asylum seekers today is intended to deter additional asylum seekers from arriving. The most efficient way to deal with asylum seekers who make use of deceptive assertions in order to stay in Israel is through development of a reliable mechanism to examine their status.

Rationale for Recommendation 11: Arrest or detention should serve only as a last resort.

Arrest and detention are enforcement mechanisms that impinge significantly on personal liberty. They should not be used with the intent of deterring future asylum seekers from entering Israel. Recommendations presented to the EU to improve asylum policy include the shortening of periods of detention of asylum seekers (Natan, 2012). Research from countries, that employ the detention system, shows that detention causes long-term psychological damage. For example, Coffey and others show in their article that asylum seekers who were held in jail in Australia suffer from PTSD, from difficulties in creating social connections with others, and a feeling of injustice and even betrayal by the country to which they arrived (Coffey et al, 2010). Similar findings arose in research conducted in 23 European states in which asylum seekers and other migrants are kept in prison conditions (Jesuit Refugee Service, 2010). In addition, a report of the UNHCR (2011) shows that in the United States, Canada, Australia and even Hong Kong, expenses for detention are always higher (sometimes as much as ten times) than the alternatives to detention developed in these countries. Gurd (2011) points out that the Swedish model of refraining from detention improves the level of obedience of asylum seekers to the laws of the state and its decisions regarding status, and reduces the need for police enforcement against asylum seekers (Gurd, 2011). As opposed to arguments made in Israel, another study shows that in the choice of a country to which they will seek

entrance, whether the country holds asylum seekers in detention centers or in the community is not a central consideration (Having a and Boeker, 2010).

Rationale for Recommendation 12: Clear divisions of responsibility must be created among the relevant ministries.

The population of asylum seekers requires treatment that crosses areas of responsibility between a number of ministries and authorities. We must ensure that negotiations among ministries and other authorities regarding resources and priorities does not cause harm to human rights, as is the case today.

Rationale for Recommendation 13: Working to overcome racism toward asylum seekers in Israel.

As the Jewish state, representing a people who have suffered throughout history from verbal violence and incitement with deadly ramifications, Israel has a duty to encourage its citizens, especially the elected officials, to refrain from the use of expressions and behaviors that may cause outbreaks of racism toward asylum seekers.

Rationale for Recommendation 14: Refrain from creating migrant “ghettos.”

Research shows that “ghettos” of migrants can cause higher levels of racism toward asylum seekers and deterioration in their socio-economic status. This is apparent from research performed in England in 2006 (Philimore and Goodson, 2006), and previous research in the United States (Wilson, 1998), and other studies.

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About Us:

The Task Force was created at the Ruppin Academic Center with the support of the Public Council of the Institute for Immigration and Social Integration and HIAS. It includes representatives of the Public Council and HIAS; academics from Ruppin Academic Center, Tel Aviv University, the Hebrew University of Jerusalem, the American Jewish Committee; and individuals from the fields of education and communications. The Task Force devoted three days to consultations, and studied the guidelines of the UNHCR as well as policy papers, academic studies, and other research papers. The Task Force met with specialists and field workers from the arena of migration; Members of Knesset; representatives of government offices, the UNHCR, and NGOs. The Task Force held its final meeting in October.

Task Force Members (in alphabetical order)

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