

African Asylum Seekers in Israel

Frequently Asked Questions

Israel was active in the drafting of the 1951 Refugee Convention, was among the early signers of the 1967 Protocol to the Convention, and has one of the highest rates of refugee absorption in the world¹. Yet, in recent years, many African migrants, including Sudanese refugees, are entering Israel illegally from Egypt in search of asylum. Israel, however, lacks adequate asylum facilities and infrastructure. Refugees thus face less than optimal reception, detention, and treatment upon arrival. In August 2007, Israel returned nearly 50 asylum seekers to Egypt, including persons from Darfur. Some of the group has been returned to Sudan, while others remain in detention without access to the United Nations High Commissioner on Refugees (UNHCR). Israel can protect refugees in compliance with the Refugee Convention without undermining its security. The American Jewish community can also help Israel train personnel for an Israeli asylum system. Below is a list of frequently asked questions and answers to inform interested individuals and organizations about the situation in Israel.

Q: Who is a "refugee"?

- According to Article 1 of the 1951 Convention relating to the Status of Refugees, a refugee is an individual who, due to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a social group or political opinion, was compelled to leave the country of his/her origin and unwilling or unable to return to it due to this fear. The 1951 Convention, which defines who refugees are and the legal protection they are entitled to, has been ratified by a total of 147 countries, including Egypt and Israel.

Q: What is international refugee law?

- According to UNHCR, an international agency established by the United Nations General Assembly in 1951 to be the authoritative voice on the refugee convention, international refugee law is a large body of law based on the 1951 Convention. Its core function is to protect victims and individuals at risk of persecution who have crossed an international border and who are escaping persecution in their country of origin or permanent residence. International refugee law prohibits the forcible return of a refugee to his or her country of origin and provides basic human rights guarantees during the refugee's stay in the country of asylum.

¹ Israeli law does not consider any of its Jewish immigrants to be "refugees."

Q: Who is an asylum seeker and how does it differ from a refugee?

- An asylum seeker is someone who is applying for refugee status but does not yet have an official determination that he/she meets the criteria to be determined and designated a refugee. Until a competent adjudicator determines otherwise, asylum seekers should be considered refugees under the 1951 Convention and be protected from involuntary return.

Q: What is a “hot return”?

- “Hot return” is not a term common to international refugee parlance, rather it is a phrase used by Israel to describe a quickly arranged immediate return of migrants and asylum seekers to the country from which they first arrived or country of origin or permanent residence. More often referred to as a “coordinated immediate return,” “hot returns” infringe on asylum seekers’ rights as they do not allow for ample time to request refugee protection. Most importantly, “hot returns” violate the principle of *non-refoulement*, which is a refugee’s right not to be returned to a country where he or she will face persecution or to a country that will return him/her to the place of persecution.

Q: What happened with Israel’s “hot return” in August?

- On August 19, 2007, a group of 48 migrants, including some from Darfur, were returned to Egypt only one day after they had entered Israel by illegally crossing the Egyptian border. During their day in Israel, the border crossers were detained without access to any aid organization and were thus unable to file for asylum. On October 28, 2007, Egyptian authorities returned at least five of these persons to Sudan, a country that has established that it is a serious crime for a citizen to travel to Israel. Other asylum seekers from this group remain in detention, where UNHCR cannot access them.

Q: Was the “hot return” to Egypt acceptable under international law?

- In a six page opinion letter dated September 20, 2007 sent to the Israeli Ministry of Justice, UNHCR made it clear that “hot returns,” or coordinated immediate returns, are not acceptable under international law in the absence of a valid readmission agreement. Any prior inference to the contrary was a misstatement of UNHCR policy.

Egypt appears to have accepted the “hot return” of 48 asylum seekers in August on the basis of an unwritten agreement between Prime Minister Ehud Olmert and President Hosni Mubarak. However, to be valid, a readmission agreement should provide basic safeguards and an allocation of responsibilities to ensure that the asylum seekers receive adequate protection from human rights violations, including prevention of forced return to the country of feared persecution. By all accounts, the reported verbal agreement between Prime Minister Olmert and President Mubarak did not meet these minimum standards, as its terms were known to outside parties. In fact, some Egyptian officials have even publicly disputed that there was any such oral agreement which is, at the very least, a clear indication that no safeguards or allocation of responsibilities were in place.

Israel should have interviewed each migrant to ascertain if he/she wanted to apply for asylum. Under the Refugee Convention, without a valid readmission agreement, Israel is prohibited from returning *bona fide* refugees to Egypt where they risk being expelled to their country of claimed persecution.

Q: Is setting a refugee quota valid under the 1951 Refugee Convention?

- No. The Geneva Convention does not allow signatory nations to approve refugee acceptance or admission quotas. The Convention does not allow states to return anyone to a place where they have a well-founded fear of persecution. Nor does it allow an asylum seeker or refugee to be returned to authorities who may return him/her to a country where he/she could face persecution. For example, if Israel accepts 600 refugees from Darfur, but returns the 601st to Egypt without a status determination and/or a written readmission agreement that meets international standards, it would be in breach of the Convention.

Q: If Israel accepts non-Jewish refugees will it undermine the future of the Jewish state?

- No. The Refugee Convention does not require that asylum, if granted, must lead to either citizenship or even permanent residency for the refugee. Once country conditions improve, a person may cease to be a refugee and may be repatriated. Others may be resettled to third countries.

Q: Is it unreasonable to expect a small country like Israel to accept so many asylum seekers?

- According to the highest estimates, as of March 1, 2008 there are more than 6,000 individuals in Israel seeking asylum. Belgium, a country of similar size and population, has received 15,000 asylum seekers a year. Over the last three years, Jordan has experienced an influx of Iraqi asylum seekers approaching one million. By any standards, Israel is not suffering a “mass influx.” However, the potential is there. Thus, it is important for Israel to develop its own asylum system, and to negotiate viable, written readmission agreements with Egypt and with other countries if possible.

Q: If Israel establishes an asylum system, will it quickly be overwhelmed by economic migrants who claim to be refugees?

- Indeed, other countries have been overwhelmed by economic migrants who claim to be refugees. Many of these countries have since successfully improved their systems to prevent false claims by economic migrants. The United States has, for example, implemented an “expedited removal” system which works relatively well in discouraging false claims at the border and airports. With the development of a comprehensive asylum system, these sorts of policies can be adapted to Israel.

Q: Does Israel already have a functioning asylum system?

- Israel does not have its own fully functioning asylum system. Among developed countries, only Israel, Cyprus, and Italy lack their own asylum procedures or legislation. Israel depends on the UNHCR for the important determination of who may temporarily remain in Israel until conditions in their country of origin improve and who should be expelled. A few years ago, Israel established a “National Status Granting Board” that makes final decisions on refugee status applications. While a welcome development, this board serves primarily to formalize decisions made by the UNHCR. Israel has no asylum legislation, policies, or interviewers of its own beyond this board which reviews UNHCR recommendations. While many third world countries also rely on UNHCR to perform refugee status determinations, developed countries generally do not. Although UNHCR has played a positive role in Israel, it is in Israel’s national interest to develop an Israeli run asylum system using the expert guidance of the UNHCR as appropriate.

In order to prevent backlogs and best protect the rights of all asylum seekers, it is crucial that Israel invest in an asylum system with professional Israeli refugee adjudicators making refugee status determinations. In response to the influx of African migrants illegally crossing the border with Egypt on December 3, 2007, Israel outlined a new plan to employ IDF soldiers and police officers to interview and make status determinations. This new plan does not provide a comprehensive interview in a language well understood by both the official and the interviewee and does not guarantee enough time for migrants denied refugee status to access courts for an appeal.

Q: Can the United States help by resettling some of the refugees out of Israel?

- While it would not be difficult for the United States to process and absorb the number of refugees currently in Israel, such a move would cause asylum seekers to perceive Israel as a gateway to the United States. This would create a “magnet effect,” making Israel an even more attractive destination for asylum applicants. It might help, however, for Israel to seek out one or more resettlement partners, which would provide protection for refugees who have entered Israel.

Q: What needs to happen for the situation to improve?

Israel should develop its own asylum system and discontinue a sole dependency on the United Nations.

Although the UNHCR has played an important role, an efficient asylum procedure is too important for Israel's security to be entrusted to the UN. Continuing the current dependence will produce further processing backlogs. The experience of the United States and other western countries has shown that asylum backlogs invite abuse of the system until it commonly collapses under its own weight. The UN will not provide Israel with the resources it needs to get asylum backlogs under control. A proper asylum system to hear claims from a few thousand people each year, resulting in temporary protection for some and expulsion for others, would be well worth the investment. Moreover, expedited screening procedures are crucial to the success of an asylum system, in order to assure Israel's security by determining who should be provided asylum and who should be returned in a timely manner.

Israel should ask the United States government for assistance in negotiating a written readmission agreement with Egypt that complies with international standards.

The US government could be encouraged to work with Egypt and Israel to broker a written agreement between the two countries to allow for asylum seekers to be returned to Egypt with assurances against "onward returns" and other mistreatment.

It is also important that readmission agreements be established with source countries. This would foster safe repatriation of those determined to be economic migrants without documentation to their country of origin or permanent residence.

Q: What can concerned members of overseas communities do to help assist in raising public and private funds to support the training of personnel for an Israeli asylum system?

- 1) Encourage the United States government and Israel to create an asylum procedures training program on asylum procedures for Israelis. UNCHR can also provide expert advice on how to devise appropriate "expedited" asylum and removal procedures for Israel.
- 2) Continue to promote development assistance programs in Africa to make safe repatriation, reception, and integration of refugees possible and comfortable.

This Frequently Asked Questions sheet was prepared by Gabrielle Thal-Prusan, Goldman Fellow at JBI.

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