

Update: African Asylum Seekers in Israel

Problems regarding a recent influx of African migrants and asylum seekers were outlined in a JBI Human Rights Information Paper issued in August 2007. This new paper updates the situation in both Israel and Egypt, as the crisis in Africa continues

In August 2007, Israel returned 48 migrants to Egypt without first allowing them to file for asylum. This return was challenged as a breach of international refugee rights law, applicable to both Egypt and Israel, that prohibits *refoulement*, or the return of an asylum seeker to a place where he or she fears persecution. In response to Israel's "hot return," there is now a case pending in the Israeli Supreme Court lodged by refugee rights advocacy groups. Israel recently told the court that it will task the Israel Defence Forces (IDF) at the border to make refugee status determinations, but observers have argued that this plan has many shortcomings.

Immigration policy experts argue a need for the development of an Israeli asylum system. A proper refugee adjudication process, allowing the state to expeditiously determine who is an economic migrant to be returned and who is an asylum seeker to be protected, is crucial for ensuring Israel's security and for upholding refugee rights.

At present, the number of migrants has grown, with approximately one thousand persons entering Israel from Egypt each month. On February 27, Israeli police authorities informed government agencies of plans to initiate daily sweep operations to arrest and remove immigrants. The United Nations High Commissioner for Refugees declared such operations would be a serious breach of the 1951 Refugee Convention that Israel has ratified.

Background

African asylum seekers, including people from Darfur, have long sought refuge in Egypt. In that country, however, they confront a lack of employment, low access to housing and basic care, as

well as violence and mistreatment reportedly due to ethnic differences. During the past two years, many have been illegally crossing the border from Egypt into Israel in growing numbers, some seeking refuge from conditions in Egypt while others are migrating for economic purposes. Violence on the border has become endemic, continuing since July, when Egyptian officials killed a woman from Darfur and wounded four others attempting to cross the border into Israel. On November 10, 2007 another woman was killed at the border by Egyptian security forces. On December 21, 2007 an Egyptian border guard was shot dead, reportedly by smugglers moving individuals across the border; several would-be migrants were also wounded. The Egypt-Israeli border is a contentious area not only because of people seeking to cross, but also because of drug, arms, and human trafficking. It is evident that Egypt has continuously failed to meet its international obligations at the border both through use of excessive force by border officers and by Egyptian official inaction to investigate and prosecute any crimes committed by the border guards.ⁱ

The number of migrants from Africa in Israel has been growing by more than a thousand new arrivals each month. According to The United Nations High Commissioner for Refugees (UNHCR), as of March 1, 2008 there were more than 6,000 migrants in Israel seeking refugee status. Israel, however, does not have adequate asylum facilities and is not prepared to deal with the rising numbers of people crossing the border. *Bona fide* refugees face less than optimal reception, detention, and treatment upon arrival. Israel views many of the border crossers as a security threat because Sudan is currently in a formal state of war with Israel, and the two countries lack diplomatic relations. The 1954 Enemy Infiltrators Act allows Israel to detain migrants viewed to be a security threat, and while imprisoned these individuals are still not given the opportunity to submit asylum applications to the UNHCR.

Additionally, asylum seekers who illegally cross the border, if returned to Egypt, are at risk of *refoulement*, which puts them at risk of further persecution.

In this context, the Israeli government's statement in 2007 that it will accept 600 asylum seekers from Darfur is welcome. This generosity, however, does not meet the need for the development of a national asylum system, nor does it meet the need for an appropriate readmission agreement with Egypt to fully respect and uphold the 1951 Refugee convention and its 1967 Protocol.

On February 27, the Head of Operations Department in the National Police Headquarters of Israel informed the Israeli Prison Authorities, the head of Prison Security, and the Ministry of Justice, among others, of a new operation to arrest and remove migrants. The order explained that every day, 300 illegal entrants who had crossed the border with Egypt would be arrested and put in detention, where they would await an order from the Population Registry determining whether they would be released or removed from the country. This decision would also apply to those migrants who had already registered with the UNHCR.

In response, Miki Bavly, the UNHCR representative in Israel, stated that the directive was "totally and completely opposed to proper procedures governing asylum seekers and their security." In particular, he stated that returning Sudanese asylum seekers to Sudan would be "a breach of the convention that Israel has signed in its most serious form..."

The "Hot Return"

On August 19, 2007, a group of 48 asylum seekers, including some from Darfur, were returned to Egypt where some were deported to Sudan. Egypt accepted what Israelis termed as a "hot return," more commonly referred to by refugee experts as a coordinated immediate return, of these refugees on the basis of a purported oral agreement between Israeli Prime Minister Ehud Olmert and Egyptian President Hosni Mubarak. On October 28, 2007, Egyptian authorities reportedly returned at least five people to Sudan, a country that considers it a serious crime for a citizen to travel to Israel. Others from this group remain in detention in Egypt without access to the UNHCR, and thus are prevented from claiming refugee status.ⁱⁱ

In a six-page letter dated September 20, 2007 sent to the Ministry of Justice, the UNHCR expressed its authoritative interpretation of the Refugee Convention, stating that "hot returns" are not acceptable under international law and expressing

concern "that coordinated returns are being conducted by Israeli authorities without mechanisms being in place to identify those who may be safely returned and those who may need to be given access to asylum procedures in Israel."ⁱⁱⁱ In concluding that the August 19th return did not meet minimum refugee law standards, UNHCR notes that a valid readmission agreement must provide basic safeguards and an allocation of responsibilities to ensure that the asylum seekers receive adequate protection from human rights violations, including onward return to the country of origin.

Egypt has also been criticized by international human rights organizations for its mistreatment of refugees and asylum seekers as well as for its reception of Israel's coordinated immediate return in August. The Egyptian Authorities have remained unresponsive to UNHCR's request for information about the asylum seekers who were deported.

This "hot return" received substantial press coverage, sparking serious concern among many observers, including those active in the Save Darfur campaign. The Jacob Blaustein Institute for the Advancement of the Human Rights and others have pointed out the need for each asylum seeker to be interviewed in order to determine who bona fide refugees are and who should or should not be returned to Egypt. Moreover, no country is permitted to return refugees or asylum seekers merely because they have established a fixed number of people they are willing to absorb permanently. The Refugee Convention does not allow states to return asylum seekers to a place where they have a well-founded fear of persecution. Just as assuring the safety of Sudanese refugees is needed to uphold the 1951 Refugee Convention, it is also a crucial concern of the Save Darfur campaign.

Refugee Rights in the Israeli Supreme Court

In response to the "hot returns," refugee advocacy groups, primarily led by the Tel Aviv Refugee Rights Law Clinic and the Hotline for Migrant Workers, have filed an appeal with the Israeli Supreme Court. In an interim decision by the Court on September 24, 2007 the Court ordered the State to present, within 45 days, an appropriate mechanism to manage the border and differentiate between genuine asylum seekers and migrants who can be returned. In response to this opportunity, Israel issued a Complementary Announcement on December 3, 2007 that set forth a new plan to use Israeli Defense Force (IDF) and other law enforcement officials to conduct refugee status determinations at the border. Refugee rights attorneys and advocates have the opportunity to offer their opinion of this plan, after which the Court will

hold hearings to review whether or not the state's mechanism is sufficient and just.

Status Determinations on the Border

The Complementary Announcement from the State of Israel to the High Court of Israel on December 3, 2007 declared that border crossers would be questioned upon arrival by IDF soldiers or police officers. Thus, Israel's new plan would use army personnel and law enforcement who are not necessarily trained in how to make refugee status determinations according to UNHCR guidelines. Israel's proposed interview procedures would not fully or directly ascertain if the asylum seekers fear persecution upon return to their country of origin or in Egypt. Differing from the standards used to determine refugee status, these interviews place the burden of proof on the asylum seeker to explain and articulate his or her fears without being asked or prompted by the border officials. Moreover, the plan does not assure that there will be interpreters on staff or that the personnel conducting the interviews have more than a rudimentary knowledge of other relevant languages, thus ensuring only minimal communication between the questioner and the asylum seeker.

This interview process also does not provide the asylum seeker with ample opportunity to access a judicial system to make an appeal if refugee status is denied. While expeditious refugee status determinations are a good practice, it is important for asylum seekers to have a fair procedure of review including access to courts. Without a proper adjudication process, it is difficult to determine if the border crosser is an economic migrant or is indeed a refugee. To assure Israel's security as well as the human rights of all migrants it is important to improve this plan, beginning with hiring trained professionals to make status determinations.

An Asylum System of Its Own

Israel is dependent on the United Nations High Commissioner for Refugees (UNHCR) and is one of only three developed countries without its own asylum procedures. While Israel has a "National Status Granting Board" which grants refugee status to refugees, this board serves primarily as a rubber stamp to decisions 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 the UNHCR to perform refugee status determinations, developed countries almost always have their own systems staffed by their own citizens and not personnel employed by the UN. However, there are notable exceptions, such as Italy.

Currently, Israel depends on the UNHCR for this important determination of who may remain in Israel until conditions in the country of origin or permanent residence improve, and who should be expelled. Although the UNHCR has played an important role, many observers would argue that an efficient asylum procedure is too important for the security of the State of Israel to be entrusted to the UN. It is important to develop an Israeli asylum adjudication process with expert guidance from the UNHCR. Continuing the current dependence will produce further processing backlogs. 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 a worthwhile investment.

Protect Israel through the Protection of Refugee Rights

There are many concerns about security that have slowed down progress and the effort to protect refugee rights. Yet, the acceptance of non-Jewish African refugees does not undermine the viability of Israel as a democratic Jewish state. The Refugee Convention does not require that the state grant asylum seekers with permanent residence status or citizenship. Once country conditions improve, a person may cease to be a refugee and may be repatriated. Others may be resettled in a third country.

While some fear the establishment of an asylum system might have a "magnet effect" and draw more economic migrants claiming to be refugees, it is possible to develop a system 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.

Moreover, while Israel's small size does limit its ability to welcome refugees, it has not reached its maximum capacity. Belgium, a country of similar size and population, has 15,000 asylum seekers a year. Currently, there are an estimated 190,000 foreign migrant workers employed in Israel, half of whom are reportedly there legally.^{iv} The number of asylum seekers, though on the rise, pales in comparison to the number of migrant workers. While the current refugee and migrant situation does pose significant security and border enforcement concerns, as is, the current situation cannot be classified as a crisis. While being overwhelmed by economic migrants and an influx of refugees is possible, it is not yet today's reality in Israel. Yet, further negligence to adequately develop an asylum system will likely create an unmanageable refugee crisis.

Steps Forward

- **Israel should make it a priority to negotiate a viable written readmission agreement with Egypt.**

In a letter dated September 20, 2007, the Honorary Representative of the UNHCR in Israel, Miki Bavly, explained that UNHCR's position is that such returns cannot be affected without proper safeguards in place.^{vi} Such returns require a formal readmission agreement that is protection-sensitive; otherwise the states will be in violation of the principle of *non-refoulement*, which Bavly describes as the "cornerstone of the refugee protection system." Israel could also seek assistance in negotiating a written readmission agreement with Egypt that complies with international standards. The United States can be encouraged to offer its good offices to both Egypt and Israel to broker a written agreement between the two countries that would allow for asylum seekers to be returned to Egypt with assurances against "onward returns" and other mistreatment. Readmission agreements with source countries could also enable the safe return of those who are found to be undocumented migrants but do not qualify as refugees.

- **Israel should establish a viable asylum system under its own control.**

A system of asylum screening procedures would ensure that asylum seekers are identified, interviewed, and protected while other undocumented entrants are promptly removed. By setting up such an asylum system under its own control, Israel could protect refugees in compliance with the Refugee Convention, and without undermining its security. Others, including those from the American Jewish community, can also offer to help Israel, such as by raising public or private funds to establish an effective asylum system, including training and supporting professional adjudicators to make refugee status determinations in accordance with international law.

- **Israel and Egypt should coordinate development projects to assist with safe and productive repatriation to different regions in Africa.**
- **Individuals and humanitarian groups, including from the American Jewish community, can help encourage such development projects, which would include organizing and funding training programs in irrigation, agriculture, and construction to give people skills to return and develop their places of origin.**

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The Jacob Blaustein Institute for the Advancement of Human Rights (JBI) of the American Jewish Committee strives to narrow the gap between the promise of the Universal Declaration of Human Rights and the realization of those rights in practice. E. Robert Goodkind, Chair, Administrative Council. Felice D. Gaer, Director.

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ⁱ Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989).

ⁱⁱ Human Rights Watch, "Egypt: Do Not Return Detained Sudanese; Government Should Provide UN Access to 48 Asylum Seekers Transferred by Israel," November 3, 2007, <http://hrw.org/english/docs/2007/11/03/egypt17233.htm>.

ⁱⁱⁱ Miki Bavly, Honorary Representative of the United Nations High Commissioner on Refugees, to Yochi Genessin, Assistant State Attorney of the Ministry of Justice, Jerusalem, 20 September 2007, Israel, 3.

^{iv} Foreign workers out: Government plan aims to end employment of foreign laborers by 2014. Ynet Press <<http://www.ynetnews.com/articles/0,7340,L-3480405,00.html>> (12.09.07)

^v Miki Bavly, Honorary Representative of the United Nations High Commissioner on Refugees, to Yochi Genessin, Assistant State Attorney of the Ministry of Justice, Jerusalem, 20 September 2007, Israel, 3.