REFUGEES INTERNATIONAL

FIELD REPORT

A POWERFUL VOICE FOR LIFESAVING ACTION

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HOPE ON HOLD:
AFRICAN ASYLUM SEEKERS IN ISRAEL

"I just need peace." Those are the words of Tsehaye, a 35-year-old Eritrean man who has survived torture in his own country, detention in Israel, and years of uncertainty as he waits to hear if he will be recognized as a refugee. RI met Tsehaye in Tel Aviv while researching the experience of African asylum seekers in Israel. Tsehaye's experience is not unusual. It is the harsh reality for thousands of refugees and asylum seekers in Israel, where a policy of deterrence denies them their freedom, the right to work, access to healthcare, and trauma counseling. The threat of deportation also looms over people like Tsehaye, as Israel has yet to grant refugee status to a single person from Eritrea, despite that country's long record of human rights violations.

BACKGROUND

Almost a quarter of a million foreigners live in Israel. Less than 25 percent of them are Eritrean and Sudanese asylum seekers applying for recognition as refugees. Globally, the vast majority of Eritrean and Sudanese asylum seekers are recognized, but Israel has not granted refugee status based on the 1951 Refugee Convention to individuals from either population.

Many factors have contributed to this situation. One of the most important is the government's policy of deterring the arrival and residence of asylum seekers. Deterrence measures have included the construction of a border fence; automatic administrative detention; the denial of work permits; prohibitions on access to adequate healthcare, social, or legal services; and strict limitations on sending money outside Israel. While Israel has taken steps to prosecute and convict the perpetrators of physical attacks on asylum seekers,

POLICY RECOMMENDATIONS

- ❒ Israel should pass legislation incorporating the 1951 Refugee Convention into domestic law and provide refugees and asylum seekers with the right to work, freedom of movement, and access to adequate healthcare and legal and social services.
- ❒ The Israeli government should not tolerate incendiary statements about refugees and asylum seekers by elected officials, including use of the word "infiltrator," and should adopt and implement the UN Refugee Agency's (UNHCR) strategy for combating racism and xenophobia.
- ❒ Consistent with the UN Torture and Refugee Conventions, asylum seekers who request protection at Israel's borders should not be pushed back into Egypt, should have their asylum claims properly assessed, and should be granted protection if eligible.
- ❒ Israel should ensure that alternatives to detention are made available to refugees, asylum seekers, and migrants. Alternatives to detention – such as conditional release, reporting requirements, affordable financial deposits, and open reception centers – should always be considered before resorting to detention.
- ❒ Asylum seekers should not be subject to administrative detention for longer than necessary to verify their identity, and all detainees should have access to timely and independent custody reviews.
- ❒ Every asylum seeker should have access to a fair, full, and transparent asylum process, including in the period before a request for "voluntary" return or relocation is implemented. In this context, Israel's National Status Granting Body should be replaced by an impartial administrative tribunal.
- ❒ Temporary protection should not be used as a substitute for the individual adjudication of Eritrean, Sudanese, and Congolese asylum applications.
- ❒ Israel should invest resources in the infrastructure, housing, healthcare, transportation, and social services of neighborhoods hosting significant numbers of refugees and asylum seekers in order to ease tensions and foster a harmonious relationship with the local population.

elected officials continue to make xenophobic comments which may encourage such assaults.

BORDER CONTROLS

Through an amendment to the 1954 Prevention of Infiltration Act and the introduction of complementary policies in 2012, Israel imposed a series of measures to detain and control asylum seekers entering Israel through the Sinai Peninsula. Chief among them was the construction of a fence stretching the length of the border between Israel and Egypt.

The fence has achieved its intended purpose. Prior to June 2012, when the fence was completed, approximately 1,000 to 1,500 asylum seekers per month were reaching Israel. Since then, those numbers have decreased dramatically, to the extent that in July 2013 only one person was known to have gained entry. The number of people who arrive at the border but do not manage to cross is not recorded, but non-governmental organizations (NGOs) have reported that in some instances the Israeli military has pushed Eritreans and Sudanese back into Egypt, where they are at risk of being returned to their countries of origin and subjected to serious violations of their human rights.

ADMINISTRATIVE DETENTION

Concurrently with the construction of the border fence, Israel expanded the detention of asylum seekers, including minors. For over a year, people who crossed the Israeli border irregularly were referred to as "infiltrators" and automatically subjected to at least three years in detention. Asylum seekers from Sudan, a so-called "enemy" state, were subject to indefinite detention.

On September 16, 2013, Israel's Supreme Court struck down a provision of the Prevention of Infiltration Act that mandated automatic detention, holding it to be both a violation of Israel's Basic Law on Human Dignity and Freedom and a "grave and disproportionate abuse of the right to personal freedom, which is a fundamental right of every human being." The decision included instructions to give 1,700 detained asylum seekers individual custody hearings within 90 days, and in the future to detain new arrivals for no more than 60 days in accordance with the provisions of the Entry Into Israel Law – the original law delineating conditions for the entry of foreigners into Israel.

It remains to be seen how the Israeli government will comply with the Court's decision. Alternatives to detention – such as conditional release, reporting requirements, and open reception centers – should be developed and implemented. Indeed, consistent with the Court's decision, to establish that detaining an individual is necessary and proportionate, Israel should first consider less restrictive measures that address the concerns of the state while protecting the dignity of individuals and families.

In the meantime, application of the Prevention of Infiltration Law remains problematic as it was originally enacted in 1954 to address the threat of terrorism. By labeling asylum seekers as "infiltrators," they become associated with a grave national security threat.

Pursuant to Population and Immigration Authority (PIBA) regulations, since September 2012, another detention measure has allowed the police, if they "lack sufficient evidence to take [a criminal] case to trial" or if there is insufficient public interest in a prosecution, to place asylum seekers in detention. If the person holds a temporary visa, then it "will be cancelled…and a deportation warrant will be issued."

Both asylum seekers and NGOs informed RI that simply not having the receipt for a bicycle or cell phone could raise a suspicion of theft, authorizing the police to turn a person over to PIBA for detention and possible deportation. Following the September 16 Supreme Court decision, Attorney General Yehuda Weinstein ordered that the "procedure dealing with infiltrators involved in criminal activity" be frozen until a more "in-depth" examination of the issue takes place.

WORK

After being released from detention, the majority of asylum seekers are given "conditional release" visas, which state that "this document is not a work permit." While the government declared before the Supreme Court that neither employers nor asylum seekers would be prosecuted for entering into an employment relationship, businesses are still reluctant to hire asylum seekers due to the wording of the visa. The conditional release visa must also be renewed every few months, and can be withdrawn at any time by a ministerial office. This uncertainty creates a further obstacle to gaining employment.

Giving asylum seekers access to work permits might ease tensions in long-neglected south Tel Aviv, where the majority of asylum seekers currently live. If work was permitted, then asylum seekers could move to other locations where employment is available in trades such as construction, agriculture, caretaking, and in hotels serving tourists. This could have the effect of decreasing the concentration of asylum seekers in one geographic area. Opening reception centers in multiple locations across the country would also help to achieve this goal.

SERVICES

Asylum seekers in Israel have almost no access to non-emergency healthcare or legal and welfare assistance. As a result, NGOs and volunteers try to fill in the gaps by providing basic medical care and follow-up to survivors of persecution and torture; social services, including shelter and daycare; and legal assistance with asylum claims.

NGOs are the first to state that this type of *ad hoc* service provision is inadequate, and many advocate for the Israeli government to provide access to healthcare and other welfare assistance while asylum seekers are resident in Israel, regardless of whether they are considered to be legally present. To address this issue, Israel should pass legislation incorporating the Refugee Convention into domestic law, including provisions concerning the right to work, freedom of movement, adequate healthcare, and access to legal and social services for refugees and asylum seekers.

RETURNS

Prior to any adjudication of their asylum applications, the government will process Eritreans and Sudanese for removal if they "voluntarily" make a decision to return to their home countries. According to the government, in July 2013, 177 Eritrean and Sudanese asylum seekers "voluntarily" returned to their places of origin. However, when the choice is between prolonged detention and return (as it was for each of these asylum seekers) this cannot be considered a truly voluntary decision.

In fact, NGOs reported that some asylum seekers were making decisions to return under duress, sometimes being told by officers that they would not be recognized as refugees and that the only way to leave detention was to sign a request for return. The Supreme Court's order limiting the application of long-term detention may address these concerns, but how the government will implement the order remains to be seen.

Human rights advocates are concerned that at least 1,400 detained Eritreans who made applications for asylum will be denied protection and/or opt for voluntary return to avoid extended detention. While dozens have been denied, no Eritrean asylum seeker in this group has yet to be granted protection. RI believes that every asylum seeker should have access to a fair, full, and transparent asylum process, especially before a request for "voluntary" return is implemented.

RELOCATIONS

In August 2013, the Israeli government announced that it would remove to Uganda some asylum seekers who "voluntarily" made a request to be relocated, even if they did so while detained. Uganda disputes that such an agreement exists and Israel has since clarified that discussions are ongoing.

As a general principle, asylum seekers should be processed in the country where they requested protection, and relocation should not be used to circumvent responsibilities freely assumed by the state through ratification of the Refugee Convention. Israel's policy of deterrence, which includes the use of relocation instead of refugee processing to discourage the arrival of asylum seekers, does not meet this standard.

It is the position of the UN Refugee Agency (UNHCR) that third-country relocation from Israel would not be considered voluntary unless specific safeguards were in place. Before a transfer, Israel would be responsible for ensuring that Uganda or other third countries party to a relocation agreement would admit each individual; protect them from forced return to a country where they are at risk of persecution; and provide them with access to a full, fair, and transparent refugee status determination procedure.

The Ugandan government does not permit refugees to access citizenship or permanent residency, and is not well-placed to ensure that relocated refugees and asylum seekers have adequate access to protection and basic services. The Uganda relocation proposal should consequently not be taken forward.

SEEKING ASYLUM

Israel was an early signatory to the Refugee Convention and its 1967 Protocol, as well as the UN Convention Against Torture. During the past 60 years, however, the country has recognized just 202 refugees, less than 0.01 percent of all applicants. In 2012, Israel extended protection to just six refugees.

Sudanese and Eritreans in Israel are granted temporary protection from deportation due to the pervasiveness of human rights violations in their countries of origin. Because they cannot be forcibly returned, they are routinely denied the opportunity to file and process their asylum applications.

Temporary protection should not be used as a substitute for the individual adjudication of Eritrean and Sudanese asylum applications. Temporary protection as currently instituted in Israel does not provide asylum seekers the right to work or access to the healthcare, welfare, and legal services that they need. Asylum seekers who cannot survive and who are confronted with the prospect of interminable legal limbo may be induced to give up the right to seek asylum and feel obliged to opt for "voluntary" return or relocation.

PROCESSING ASYLUM CLAIMS

The process used to determine refugee claims must provide asylum seekers with a fair, full, and transparent opportunity to seek protection. Israel's asylum process does not meet this standard.

Israel's Ministry of the Interior hears initial asylum claims through the PIBA. Interviewing officers undergo extensive training in refugee law, which is an important component of a fair hearing. However, because they are bound by the legal opinions of the Attorney General and are not authorized to grant asylum claims, PIBA is neither impartial nor independent.

Final recommendations on asylum applications that are not rejected "out of hand" in an accelerated procedure are made by the National Status Granting Body (NSGB), which includes representatives of PIBA and the Ministries of Foreign Affairs and Justice. The involvement of three different ministries in asylum decisions again raises questions as to the influence of outside factors and the impartiality of a final decision.

In 2013, the Ministry of the Interior's senior legal advisor issued a memo stating that an Eritrean's decision to avoid conscription or defect from the military did not constitute a political opinion.

It is well documented by UNHCR, the U.S. State Department, and human rights organizations that Eritreans who defect from or avoid army service are at risk of arrest, serious human rights violations, or death if returned. And yet, it is Israel's position that this disproportionate response may not rise to the level of persecution. A blanket policy of denying any claim that is based primarily on avoidance of or defection from the Eritrean army is not consistent with an asylum seeker's right to an individualized hearing.

Asylum seekers have the right to access legal counsel, but the only NGO permitted to meet with detained asylum seekers, the Hotline for Migrant Workers, is limited in the time and scope of its visits. In order to meet with asylum seekers and assess legal claims, it must have a list of their names and prison numbers, and this is only possible if friends or family outside the facility know how to reach the Hotline. Even then, the Hotline has only two attorneys. Other legal services that are able to pick up cases, such as clinics at Tel Aviv University and the Academic Center of Law and Business, also have limited capacity.

Being represented in asylum proceedings can often mean the difference between release or detention, or even life and death. Because most asylum seekers, particularly those in detention, can neither afford to hire counsel nor access it easily, the government should both fund independent legal aid to assist them and allow NGOs to more easily access asylum seekers in detention.

International standards require that asylum seekers have the right to appeal decisions before an independent body, but a meaningful mechanism for appeal does not currently exist in Israel. There is no right to direct appeal of an adverse refugee status recommendation made by a PIBA asylum officer, although review of the decision may be made to the District Court. Instead, recommendations are referred to a meeting of all NSGB committee members, and the NSGB has never reversed or remanded a negative refugee status recommendation made by the PIBA. After consultation, the NSGB's recommendation is referred to the Minister of Interior for a final decision.

Lawyers have successfully filed requests for review before independent national courts, but this opportunity is only accessible to the tiny fraction of asylum seekers who are able to acquire and/or pay for legal counsel. It is not a substitute for a fair, full, and transparent asylum process.

THE WAY FORWARD

The current population of asylum seekers in Israel is decreasing, with only one entry recorded in July 2013 and "voluntary" returns ongoing. With a static population, the government should now have the time and resources to reformulate its asylum procedure so that it is fair, full, and transparent.

Israel has taken up this challenge in relation to victims of trafficking, who are protected by both national legislation and strong government support for the UN Trafficking Protocol. Law and policy to eliminate trafficking includes stiff criminal prosecutions, a taskforce to root out instances of trafficking, free legal assistance, a shelter for survivors, and the provision of services to address the impact of violence and exploitation.

In 2009, Israel became aware of the presence of trafficked persons in the Sinai and, in a very positive development, focused on assisting the survivors. This program is not without deficiencies, however the policy of assisting the victims of trafficking rather than deterring their presence demonstrates that when political will exists, Israel is able to tackle complex issues of asylum and protection in a manner that is consistent with international law.

While the inherent politics and prejudices of migration management may make it more difficult to exercise positive political will in the realm of refugee protection, Israel can and should implement fair and effective laws and policies for asylum seekers awaiting resolution of their claims.

Sarnata Reynolds traveled to Israel in August 2013 to assess the situation of African asylum seekers.