

Until our hearts are completely
hardened

Asylum Procedures in Israel

Hotline for Migrant Workers

**Until our hearts are completely
hardened**

Asylum procedures in Israel

Written by Adv. Yonatan Berman

Translated from Hebrew by Shevy Korzen

Cover design by Michal Rubinstein

About the Hotline for Migrant Workers:

The Hotline for Migrant Workers is a non-partisan, non-profit association, that works to protect the rights of migrant workers and to eradicate the trafficking of human beings in Israel, so as to establish a just, equitable and democratic Israeli society that promotes tolerance and protects the weak. Hotline activities focus on providing information regarding rights, on counselling and legal representation, on raising public awareness and on changing government policy so as to prevent conditions of modern slavery in Israel. Their work is made possible thanks to the efforts of volunteers, and the generous support of individual donors and funding bodies.

The Hotline for Migrant Workers

75 Nahalat Binyamin Street, Tel Aviv 65154, Israel

Tel. +972-3-5602530 (03-5602530). Fax +972-3-5605175 (03-5605175)

Email: info@hotline.org.il

Website: <http://www.hotline.org.il>; <http://www.naimlehakir.co.il/>

© Copyright, Hotline for Migrant Workers (Registered Association).

Table of Contents

Introduction	5
1. The rhetoric employed by authorities regarding asylum seekers	7
2. Infiltrators or asylum seekers – on “temporary protection“, refugee status and the gap between the two.....	8
3. The structure of the Israeli asylum system, past and present	12
4. Flaws in the 2011 procedure for handling asylum applications.....	17
4.1. Setting a time limit of one year for applying for asylum	18
4.2. The procedure for dismissal out of hand.....	21
4.3. Granting a permit pursuant to Article 2(a)(5) of the Entry to Israel Law instead of a staying permit of type b/1.....	23
4.4. Non-disclosure of materials on which a decision is based.....	24
4.5. The Exclusion of Nationals of Enemy or Hostile States.....	25
4.6. Unreasonable time limits for challenging decisions	26
4.7. The procedure does not include provisions relating to the <i>non-refoulement</i> principle outside the Refugee Convention (Complementary Protection).....	27
5. Problems with the practices of the asylum system.....	28
5.1 The interview methods	28
5.2. The methods employed by the Ministry of Interior to assess credibility	30
5.3. Research and information on country of origin	34
5.4. Examination of credibility in the basic interview and in proceedings for dismissal of out hand	41

5.5. Inadequate rejection letters and insufficient summary evaluations	42
5.6. Problems with translation.....	48
6. Consequences of a flawed system reflected in refugee recognition rates in Israel	51
Summary and Conclusions.....	53
State's response to the report	56

Introduction

Until 2008 the State of Israel delegated the role of questioning, identifying and determining the status of asylum seekers to the office of the High Commissioner for Refugees (UNHCR). In 2008 it decided that thereafter it would conduct these processes on its own. At first, the Questioning and Identification Unit at the Ministry of Interior was established to take on the role of receiving and registering asylum claims. In July 2009, after several weeks of training, the Refugee Status Determination (RSD) Unit began to operate. It was given the role of examining asylum claims filed in Israel, by conducting interviews with asylum seekers, considering their claims, researching relevant data pertaining to their countries of origin, and forming an opinion of whether the claim complies with the conditions set out in the Convention relating to the Status of Refugees.

The two newly established units have been granted the authority to make critical decisions. They are tasked with determining whether applicants are refugees or not. A refugee is a person outside his or her country of nationality, and owing to a well-founded fear of being persecuted (i.e. of life threatening danger, deprivation of freedom or a violation of other basic human rights) for reasons of race, religion, nationality, membership of a particular social group or political opinion, is unable, or unwilling to avail himself of the protection of his or her country of nationality.¹ An erroneous decision of the units may result in a person being deported to their death or to a place where he or she will be subjected to torture or other serious kinds of harm.

The goal of this report is to examine the operation of the system for examining and assessing asylum claims in Israel, and to review its work over the two and a half years since it began to operate. The report limits its investigation to the narrow domain of the refugee status determination mechanism. It does not delve into the many other aspects of the refugee system in Israel that relate to the rights of refugees, the rights of asylum seekers during the period

¹ Article 1.A(2) of the 1951 Convention Relating to the Status of Refugees, as amended by the 1967 Protocol Relating to the Status of Refugees, available at: <http://www.unhcr.org/3b66c2aa10.html>.

that they wait for a decision on their claims, the detention of asylum seekers, their social rights and so on.

This review of the work of the two units is based on interviews with asylum seekers and their legal representatives and on an examination of various documents produced by the units, such as minutes of interviews and full and summary assessments. It is also based on information passed on by officials of these units to the Advisory Committee on Refugees as documented in minutes of its meetings, and on assessments made by officials of the unit as they are reflected in various statements submitted by the Ministry of Interior to the courts in asylum related proceedings.

A review of practices employed by the two units paints a worrying picture. This report highlights the legal standards employed by the units, which are not consistent with the standards by the Refugee Convention; the breach of applicants' right to argue their case both in relation to the individual findings in their case, and in relation to the situation in their country of origin; unfair, degrading and threatening treatment during asylum interviews; and biased, selective and unprofessional research conducted by the units on the countries of origin of asylum seekers.

This grim picture is also reflected in the RSD unit's recognition rates. To the best of our knowledge, in the two years of its operation only one applicant has been found by the RSD unit to meet the criteria set out in Refugee Convention. All the other thousands of applications that the unit assessed were refused. The mere fact that the findings of the new asylum system are, that many of the applicants do not fall within the Refugee Convention's criteria, is not in and of itself suspect. Like any other asylum system in the world, so too in Israel there are those who wish to gain legal status by being recognized as refugees, even when they do not meet the criteria set out in the Refugee Convention, and there are others who genuinely believe that they meet the criteria although they do not. The role of an asylum system is to distinguish between those that are entitled to asylum and those that are not. However, when comparing Israel's recognition rate of a fraction of percent of asylum claims to rates in other countries, there is a genuine concern that something is fundamentally flawed in the way that asylum claims are being determined by the RSD unit.

1. The rhetoric employed by authorities regarding asylum seekers

The creation of the new asylum system came in the wake of a substantial increase in the number of unauthorized entrants to Israel via its southern border. It was accompanied with statements made by high ranking officials that all asylum seekers in Israel are not refugees, but rather economic migrants. The asylum system was built on this assumption, and it appears that its stated objective was not to protect refugees, but to refuse as many asylum applications as possible in order to pave the way to deportation from Israel.

Even before a single asylum application had been assessed, decision makers at various levels of government repeatedly declared that an examination of those entering Israel via the border with Egypt has found that most are not refugees. In October 2007, on the eve of the establishment of the new asylum system, the then Prime Minister, Ehud Olmert, announced that only 498 of the “infiltrators” are refugees, and all the others are “labour infiltrators”. Mr. Olmert told the Knesset (Israeli Parliament), that the UNHCR had checked and found that all the others were labour migrants. This is despite the fact that at that time the UNHCR had not conducted a full individual assessment of any asylum application made by Sudanese or Eritrean asylum seekers, two groups that comprised that vast majority of the population of those entering Israel via the border with Egypt, as we shall see below.²

Similarly, in mid June 2009, about two weeks after the Questioning and Identification Unit began to operate, the then Head of the Population, Immigration and Borders Authority, Mr. Yaakov Ganot, declared that “In our examinations, I would say that 99.9 percent of them are here for work. They're not asylum seekers, they are not at any risk”.³ This claim was made despite the fact that the RSD unit, which only began to operate in July 2009 had not assessed a single application made by an asylum seekers at this time.⁴

² Session no. 157 of the 17th Knesset, 17 October 2007 (Hebrew), available at: <http://knesset.gov.il/plenum/data/05712807.doc>

³ Nurit Wurgaft, Closing the holes and the loopholes, *Ha'aretz*, 21 June 2009, available at: <http://www.haaretz.com/print-edition/features/closing-the-holes-and-the-loopholes-1.278503>

⁴ What began as a sinister undercurrent has recently reached the epic proportions of a flood. Mr. Amnon Ben Ami, who replaced Mr. Yaakov Ganot, has made similar statements in an interview to the Israel Today newspaper weekend magazine on 23 November 2010; The Minister of the Interior, Mr. Eli Yishai, declared that “We need to remember that refugees comprise only 0.01% of all the infiltrators (Walla News, Eli Yishai: “The

These declarations of senior officials, which preceded the examination of asylum applications by the RSD unit, lay the foundations for the manner in which the Ministry of the Interior would later examine asylum applications. When the premise of the heads of the system is that less than one percent of asylum seekers are indeed refugees, we may expect that this presumption will trickle down to the employees examining the applications. We can also assume that asylum officials, who are subjected to the indoctrination that there are no “genuine” refugees in Israel as part of their training and later in the framework of their work, will approach their tasks with this presumption.

Before we examine the system for assessing asylum claims, we will address the claims that less than one percent of asylum seekers are indeed refugees.

2. Infiltrators or asylum seekers – on “temporary protection“, refugee status and the gap between the two

These statements made by heads of government must be examined against the backdrop of the Ministry of the Interior’s policy towards the largest group of people entering Israel via the border with Egypt – nationals of Sudan and Eritrea. According to Ministry of the Interior data, published in November 2011, 88.36% of unauthorised entries to Israel through the Egyptian border were made by nationals of either Sudan or Eritrea.⁵ The Ministry of Interior regularly emphasizes that these are not refugees and that the vast majority have never applied for asylum. However, such assertions are misleading. The Ministry of Interior refuses to conduct individual examinations of asylum applications made by nationals of these two

infiltrators create an existential problem” (Hebrew), 22 November, 2010, available at: <http://news.walla.co.il/?w=9/1758470>; the Minister for Education, Mr. Gidon Sa’ar, announced that “ We need to stop the flooding of this country with immigrants from Eritrea. They are not refugees, but rather labour immigrants” (Arutz 7, Sa’ar: “Stop the flooding of the country with immigrants” (Hebrew), 27 November, 2011, available at: <http://www.inn.co.il/News/News.aspx/229304>); and the Prime Minister, Mr. Benjamin Netanyahu, said in a speech: “These are not refugees. We checked how many of them are refugees – and we found that less than one in a thousand is defined as a refugee” (the Prime Minister’s website, Prime Minister’s address in attorneys conference in Eilat (Hebrew), 19 November 2011, available at: <http://www.pmo.gov.il/PMO/Communication/PMSpeaks/speechpraktit291111.htm>)

⁵ The Population and Immigration Authority, the Unit for Planning, Research, Quality and Excellence, Data on Foreigners in Israel, 8/2011 edition, November 2011 (Hebrew), available at: <http://piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/nov2011.pdf>. Of these, two thirds are nationals of Eritrea and the remaining third are nationals of Sudan.

countries and to ascertain whether they meet the criteria of a refugee according to the Refugee Convention.

In cases where the Hotline for Migrant Workers requested the individual examination of applications made by nationals of Sudan or Eritrea, the reply has always been that the RSD unit does not deal with their applications. For example, a letter received by the Hotline for Migrant Workers from the director of the RSD unit it states the following:

“At this stage the RSD unit does not deal with foreign subjects whose nationality is Eritrean or Sudanese, I should like to note that these subjects are entitled as it is to temporary protection.”⁶

According to the current Ministry of Interior asylum procedure, an asylum seeker that turns to the Questioning and Identification Unit, where asylum applications are made, initially undergoes an identification interview. Only thereafter will a basic interview be conducted with the applicant followed by a comprehensive interview (conducted by the RSD unit). A person claiming to be a national of Sudan or Eritrea undergoes an identification interview, but does not undergo the basic or the comprehensive interview. Instead, he or she is entitled to “temporary group protection”, which is effectively the implementation of a policy of *non-refoulement* for the time being. A person claiming to be a national of these countries, but who is consequently not recognised as such, is rejected “out of hand” (see below). Therefore, those claiming to be nationals of Sudan or Eritrea are not given any opportunity to present arguments pertaining to their individual claims to be recognised as refugees under the Refugee Convention. This situation has nevertheless not stopped senior elements at the Ministry of Interior from repeatedly declaring that they are all economic migrants.

Recently various employees of the Ministry of Interior have been using the term “non-removal policy” in relation to Sudanese and Eritrean nationals, and insist that they have not been granted “temporary group protection”. Yet this contradicts previous statements of senior officials at the very same ministry. As stated in a letter quoted in the previous chapter, the director of the RSD unit has declared that nationals of these two countries are entitled to

⁶ Letter from Mr. Haim Ephraim, the director of the RSD unit at the Ministry of the Interior, 10 December 2009. A similar reply appears in a letter from Ms. Hadar Weiss from the RSD unit from 10 June 2010.

temporary protection. Similarly, the Head of the Population and Immigration Authority, Mr Amnon Ben Ami, has stated in a letter to human rights organisations that “about 90% of the infiltrators are nationals of Eritrea and Sudan. These national are at this stage residing under temporary protection – this fact is clarified by us in every media outlet and every possible venue in order to avoid any doubt”.⁷ In the course of legal proceedings before the High Court of Justice the State also declared in writing, that these two groups enjoy “temporary group protection”.⁸

The Ministry of Interior has deliberately refrained from clarifying the precise meaning of the term “temporary protection” and yet it bears clarifying. Globally, the term “temporary protection” has been used in two main contexts. In European countries temporary protection regimes have been implemented when a large number of asylum seekers from a particular country arrived as a result of an event, or a series of events leading to mass exodus. The rationale behind implementing temporary protection regimes in these countries is composed of two combined assumptions. The first is that an individual examination of a large number of asylum seekers from a particular country will unduly burden the asylum system and make it difficult for it to function. The second assumption is that an individual examination of all asylum seekers from this country will inevitably lead to the conclusion that the majority are refugees. Consequently, these states have refrained from conducting individual examinations, and have instead been satisfied with a person proving that he or she is from the particular country considered to be a “refugee producing country”. This was, for instance, the policy in some European countries regarding nationals of the former Yugoslavia in the 1990s.⁹ Later, these understandings of the concept were also incorporated into the European Council Directive for “temporary protection”.¹⁰

⁷ Letter from the Head of the Population and Immigration Authority, Mr. Amnon Ben Ami, addressed to attorneys Oded Feller, Hanny Ben Israel and Yonatan Berman, 2 January 2011.

⁸ Respondents’ reply, 17 September 2009, in HCJ 7302/07 *Hotline for Migrant Workers v Minister of Defence*, para. 62.

⁹ See: R. Marx, Temporary Protection – Refugees from Former Yugoslavia: International Protection or Solution Oriented Approach? European Council on Refugees and Exiles, June 1994; M. Kjaerum, Temporary Protection in Europe in the 1990s, 6 INT’L J. REFUGEE L. 444 (1994); J. Thorburn, Transcending Boundaries: Temporary Protection and Burden-Sharing in Europe, 7 INT’L J. REFUGEE L. 459 (1995).

¹⁰ *Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting Balance of Efforts between*

Another interpretation of the term “temporary protection” can be found in the U.S. legal system, and relates to providing “group protection” to people from particular countries or areas where their return would pose a serious threat to their personal safety.¹¹ These are cases where the threats to those returned to a particular country are not necessarily based on one of the five elements set out in the Refugee Convention – religion, race, nationality, membership of a particular social group or political opinion – and therefore they are not “refugees” as this term is defined in the Convention. And yet, despite not qualifying as Convention Refugees there is a prohibition against deporting them by virtue of the principle of *non-refoulement*, whose scope is wider than that of the Refugee Convention (and which we will elaborate on later).

On several occasions the Israeli courts have taken the position that “group protection” in Israel means providing protection to nationals of a particular country, who are under a “presumption of refugehood” (i.e. they are presumed to be refugees), rather than examining their cases on an individual basis.¹² In any case, whether the reason for refraining from removing people from these countries is grounded in the assumption that most would meet the criteria set out in the Refugee Convention, or whether it is grounded in a prohibition on deportation to a place where they may face other threats to their safety and in compliance with other international norms, these are not “merely” economic migrants that can at any time return to their countries of origin.

It is worthwhile in this context to quote the words of the Deputy Minister of Foreign Affairs to the Knesset Committee on Migrant Workers on 31 October 2011, in relation to the return of Eritrean nationals to Eritrea:

“Eritrea – at the moment we cannot do anything, because we are restrained, because in Eritrea there is a regime that is defined by the entire international community as a regime that does not respect human rights, and any person that is returned faces

Member States in Receiving Such Persons and Bearing the Consequences thereof [2001] OJ L212/12, Article 2(1).

¹¹ See, in U.S. legislation: INA § 244 (8 U.S.C.A. § 1254).

¹² See, for instance: Admin. Petition (Center) 13919-02-11 *Kebedom v Ministry of Interior*, para. 15 (3 October 2011); Admin. Petition (Center) 31308-03-10 *Hijab v Ministry of Interior*, para. 20 (2 December 2010).

danger, including life threatening danger, and that is why in this case we are more cautious.”¹³

At that same meeting the Head of the Foreigners Department at the Population and Immigration Authority declared that nearly two thirds of the so-called “infiltrators” are Eritrean nationals.¹⁴ This statistic is consistent with data published by the Population Authority and to which we referred earlier in this document.¹⁵ In other words, according to the declaration of the Deputy Minister of Foreign Affairs, who represents the government of Israel, most of those entering Israel via its southern border face serious danger should they be returned to their country of origin. These data and the official declaration that accompany them clarify, that publications describing the majority of those entering Israel from its border with Egypt as having been examined and found to face no danger in their country of origin are unfounded.

3. The structure of the Israeli asylum system, past and present

The State of Israel was one of the States most active in the drafting the Refugee Convention and one of the first to sign and ratify it. Nevertheless, to this day the Convention has not been incorporated into domestic legislation, and until very recently Israel did not have an independent asylum system. During the 1970s an honorary delegation of UNHCR was established with the role of examining asylum claims. Claims were examined by the local delegation and a decision was taken by the UNHCR headquarters in Geneva. After the examination stage, the conclusions of UNHCR were passed on to the Minister of Interior who consequently decided whether to accept the position of UNHCR and officially recognize the applicant as a refugee. This mechanism, which was in place until the beginning of the century, was problematic in that its existence was not effectively publicized and it is doubtful

¹³ Knesset Migrant Workers Committee, Minutes No. 65, 31 November 2011, p. 7 (Hebrew), available at: <http://www.knesset.gov.il/protocols/data/html/huka/2009-01-26.html>

¹⁴ Ibid, p. 4.

¹⁵ See above, footnote. 5.

whether asylum seekers wishing to file applications were able to effectively implement this right.¹⁶

In 2001 the Ministry of Justice drafted a new procedure entitled “The Procedure for Handling Asylum Seekers in Israel” which created a hybrid system whereby the examination of an asylum application was conducted by UNHCR and the final decision was taken by the Ministry of Interior. In accordance with this procedure, asylum applications were filed to UNHCR and it was the body that interviewed them, examined their individual claims, studied the conditions in their country of origin and formulated a recommendation in their case.¹⁷

The process, according to the procedure from 2001, was conducted via two tracks – the expedited track and the regular track. In the expedited track, UNHCR would initially conduct a comprehensive interview and determine whether the applicant’s claim could make a *prima facie* case for recognition as a refugee. If this was not the case, UNHCR would submit its position to a committee, and if the committee approved the recommendation to reject the claim at this stage it would then pass on its own recommendation to the Director of the Population Authority for approval.¹⁸ According to the procedure, the Committee was to be comprised of representatives of the Ministry of Interior, the Ministry of Justice and the Ministry of Foreign Affairs, and headed by a retired judge or senior jurist, who was not an

¹⁶ Attorney Anat Ben Dor from the Tel Aviv University Refugee Rights Legal Clinic described, in a talk given at the Hotline for Migrant Workers, how in 2001, when she was taking her first steps in the field of refugees and asylum seekers in Israel, she tried to find out how one could contact UNHCR in Israel and found it very difficult indeed. The two employees of UNHCR at that time occupied the offices of the American Jewish Joint Distribution Committee (the Joint) in Jerusalem, their numbers were unlisted in the telephone directory, the Information Center of Bezeq – the national phone company – had not heard of them, and they were untraceable on the internet as well. Only a select few knew how to contact them. It is fair to assume that this task, which was difficult for a lawyer who speaks Hebrew and is experienced with interacting with government authorities, was an almost impossible mission for asylum seekers.

¹⁷ According to article 1.a of the 2001 procedure, in the comprehensive interview that was designed as a preliminary screening tool the possibility of allowing the presence of a representative of the Ministry of the Interior or of the Advisory Committee on Refugees in the interviews was to be examined, and in accordance to article 3.D of the procedure, an asylum seeker whose claim had not been rejected in the expedited track procedure was to have an interview and hearing at the Population Authority Bureau. However, in practice, up until the establishment of the RSD unit in 2009, UNHCR alone conducted interviews with asylum seekers.

¹⁸ From 2001 to 2005 a decision of UNHCR that an application does not *prima facie* make a case for asylum did not require further approval. However, in 2005 the procedure was amended to add the requirement of the approval of the Committee and thereafter of the Minister of Interior or a person authorized by the Minister for this purpose.

employee of the civil service.¹⁹ Although the method of conducting the discussion and deliberations of the Committee was not encoded in the procedure, the practice that had effectively been employed until a new procedure was implemented in 2011, was to conduct discussion relating to rejections in the expedited track procedure via email correspondence among the members of the Committee.²⁰

A person whose claim was not rejected in the expedited track procedure was given, in accordance with the amended 2005 procedure, a “work and residence permit”, until the culminations of the procedures in his their case.²¹ When the examination of a case, which had not been rejected in the expedited track procedure, was completed, the Committee would formulate its opinion and pass it to the Minister of the Interior for approval. Whoever had their claim approved was entitled to receive a temporary residence permit in Israel (type a/5 permit).²² Asylum seekers whose application for asylum had been rejected in the expedited track or regular procedure were entitled to apply for a reconsideration of their case if “new circumstances had arisen that are relevant to the decision, including the discovery of new evidence or documents”.²³

In 2008 the gradual process of handing over the authority to examine asylum applications in Israel from the UNHCR to the Ministry of Interior began. At first the UNHCR and the

¹⁹ Article 2.b of the 2001 procedure. The procedure further stipulated that a representative of UNHCR will be invited to attend discussions of the Committee. However the Committee may also conduct closed discussions in the absence of a UNHCR representative, for example, when classified information is disclosed (article 2.c of the procedure). The procedure also stipulates that the Committee may allow the presence of representatives of NGOs (article 2.h of the procedure), yet in practice the participation of such representatives in the discussions has never been permitted.

²⁰ A petition against the practice of deciding on asylum claims in the fast track procedure via email correspondence among members of the Advisory Committee on Refugees was filed with the High Court of Justice. However, before a ruling was given in the case this practice was terminated, following the introduction of a new procedure at the beginning of 2011 (HCJ 1678/10 *Hotline for Migrant Workers v Minister of the Interior* (23 June 2011)).

²¹ Article 1.d of the procedure after its amendment in 2005. Prior to the amendment, the procedure stated in 1.c that a person who passed the preliminary screening stage will be granted a “(regular) temporary permit which allows their presence in Israel”. Although the procedure did not specify the type of permit, those that passed the preliminary stage were given permit of type b/1 (Procedure for Handling Political Asylum Seekers in Israel and Those Recognized as Eligible for Political Asylum in Israel by the Minister of the Interior, procedure no. 5.2.0012, dated 16.11.2008).

²² Article 3.g of the 2001 procedure stated that a person recognized as a refugee will be granted an “appropriate residence permit, which will entitle them to reside in Israel until such a time as circumstances in their country of origin will enable their return to it, or until the permit is revoked for another reason.” Article 3.c of population authority procedure no. 5.12.0012 (*supra* note 21) stipulated clearly, that this refers to a residence type a/5 permit.

²³ Article 4 of the 2001 procedure.

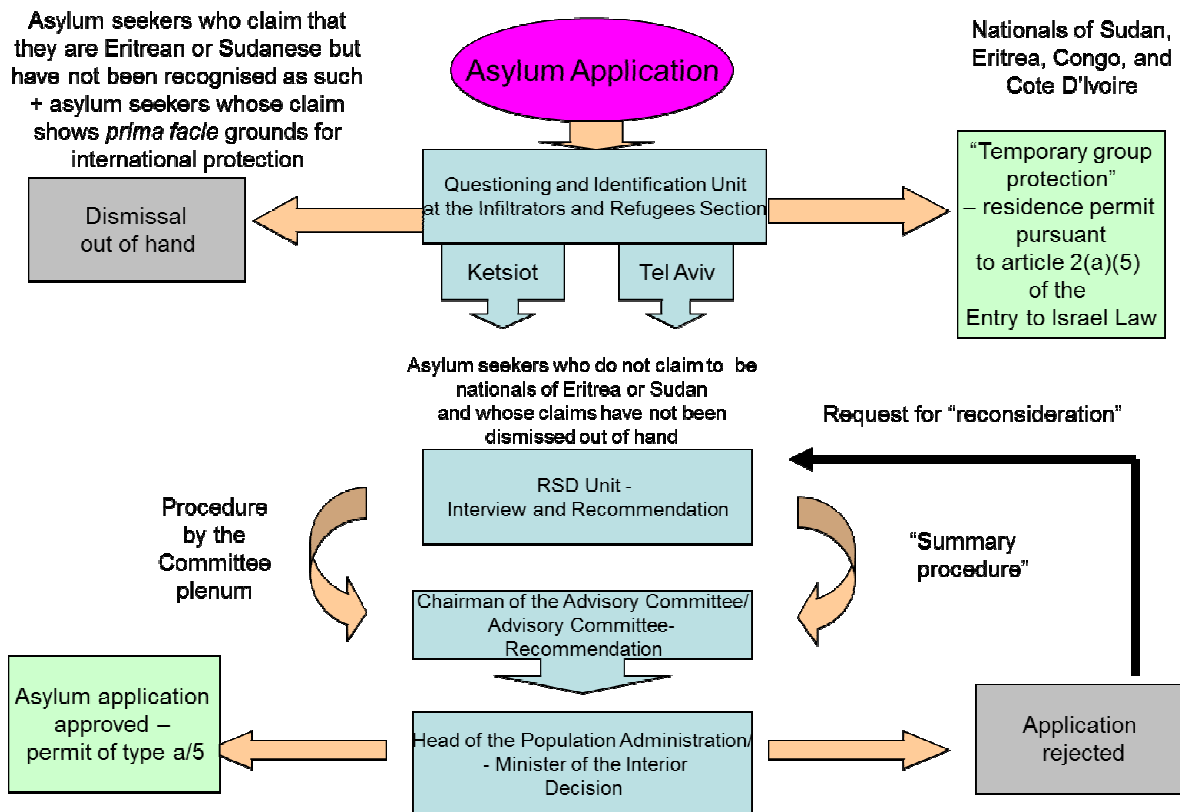
Ministry of Interior shared the initial stage of the process – the registration of asylum seekers and their applications. Later, some thirty employees were recruited for the purpose of establishing the Refugee Status Determination Unit, and received training, including by the UNHCR, the NGO Hebrew Immigrant Aid Society (HIAS) and the U.S. Department of Homeland Security. As of July 2009 all stages of handling asylum applications have been transferred to the Ministry of Interior. The Questioning and Identification Unit receives asylum applications, registers asylum seekers, and conducts the preliminary identification interviews, and the RSD Unit conducts interviews with asylum seekers and passes its recommendation to the Advisory Committee on Refugees.

In January 2011 the current procedure came into force setting out the method of handling asylum seekers.²⁴ The procedure preserves the general structure that had existed up until that point, with some restrictions. The system set out by the new procedure can be described by the following illustration:

²⁴ For the procedure in Hebrew, see:
<http://www.piba.gov.il/Regulations/Procedure%20for%20Handling%20Political%20Asylum%20Seekers%20in%20Israel-he.pdf> .

For the English version, see:
<http://www.piba.gov.il/Regulations/Procedure%20for%20Handling%20Political%20Asylum%20Seekers%20in%20Israel-en.pdf> .

The Asylum System According to the 2011 Procedure



Asylum applications are made to the Questioning and Identification Unit at the Ministry of Interior. Once registration and identification have been completed, the unit may dismiss the application for asylum out of hand if suspicion arises that the asylum seeker (the “foreign subject” in the words of the procedure) is not who he or she claim to be or is not the national of the country which he or she stated was their country of citizenship. If the application is not dismissed out of hand at this stage, the Questioning and Identification Unit conducts a “basic interview”. The Unit can also dismiss the asylum claim out of hand after this interview and without conducting a full asylum process if “the claims and facts on which the application is based, even if all of them were to be proven, do not constitute any of the elements set out in the refugee convention”.

Asylum seekers whose application was not dismissed out of hand after the “basic interview” are entitled , according to the procedure, to receive a staying permit pursuant to section

2(a)(5) of the Entry into Israel Law.²⁵ These asylum seekers will undergo a “comprehensive interview” by the RSD unit at the end of which it will form an opinion. Thereafter the unit will decide whether to refer its recommendation on to the Chairman of the Advisory Committee on Refugees in a “summary procedure” or to the Committee plenum for a full procedure. Applications are to be referred to the Chairman of the Committee if “based on the comprehensive interview it was found that the Applicant is not credible, his claims are groundless or that the fear presented by the Applicant is not well founded, and therefore the application lacks the minimal factual or legal basis for being granted political asylum.” The Chairman of the Committee is authorised to decide whether to refer the case that had been passed to him in a “summary procedure” to be deliberated by the plenum, or to reject the application and pass the decision to the Director of the Population Authority for approval.

Applications not handled under the “summary procedure” are referred to the plenum of the Advisory Committee on Refugees. The 2011 procedure preserves the same panel of the Advisory Committee that had been set out in the 2001 procedure. The recommendation of the Committee to accept or reject the asylum application is referred to the Minister of the Interior, who makes the final decision on the application. An asylum seeker, whose application is rejected after a “summary procedure” or after deliberations by the Committee plenum, may submit for a request for reconsideration of the decision if “if there has been a change in the circumstances pertaining to the matter, including the coming into light of new documents and findings”. According to the procedure, asylum seekers that are recognised as refugees should receive temporary residence permits (residence permit of type a/5).

4. Flaws in the 2011 procedure for handling asylum applications

This section of the report will be dedicated to a brief analysis of the problems arising from the procedure for handling asylum applications itself. This section will not analyse the flaws in the functioning of the asylum system that do not derive from the procedure but rather from

²⁵ The Entry to Israel Law defines this permit as “a temporary permit for visitation for a person present in Israel without a residence permit and who has been given a removal order – until such a time as he leaves Israel or is removed from it”. We will refer back and expand on this permit below.

the practices employed by the Ministry of Interior. We will return to these functional problems later.

It should be noted that our analysis of the procedure's flaws is not exhaustive due to the limited scope of this report. Before the procedure came into force and after a draft was circulated, several human rights organisations, including the Hotline for Migrant Workers, approached the Ministry of Justice to comment on the procedure.²⁶ Most of the comments were not accepted by the drafters of the procedure. The document containing the comments was twenty-nine pages long. In this report we will only address the central problem arising from the procedure itself.

4.1. Setting a time limit of one year for applying for asylum

Section 1 of the procedure for handling asylum seekers states that an asylum application that is submitted after more than a year has passed since the applicant entered Israel will be dismissed out of hand. Nevertheless, the Ministry of interior may decide not to dismiss such an application out of hand if “special reasons” for the late submission of the application exist.

The problem arising from this section is that asylum seekers often submit applications after a period longer than a year for various reasons: circumstances have changed in their country of origin while they were staying in Israel; various forms of trauma endured by victims of persecution which makes presenting claims as soon as entering Israel difficult; fear by homosexuals, lesbians, bisexuals and transgendered persons of “coming out” and being exposed;²⁷ fear of the authorities; being unaware of the existence of an asylum system in Israel and of the possibility of applying for international protection in Israel; being unaware that the facts on which the claim for asylum is based gives cause for protection under the Refugee Convention, etc. Another phenomenon is of people who arrive in Israel with a b/1 work permit, and although they are aware of the danger they may face if they return to their

²⁶ Letter by the Tel Aviv University Refugee Rights Legal Clinic, Hotline for Migrant Workers and the Association for Civil Rights in Israel to attorney Avital Sternberg of the Ministry of Justice, dated October 3, 2010.

²⁷ For an analysis of the negative outcomes of limiting gender based asylum application to one year in the United States, see: Neilson and Morris, *The Gay Bar: The effects of the one-year filing dead-line on lesbian, gay, bisexual, transgender and HIV-positive foreign nationals seeking asylum or withholding of removal*, 8 N.Y. CITY L. REV 233 (2005).

country, feel safe given their authorised stay in Israel. Only later, when their permit to stay in Israel for the purpose of employment is about to end, does their fear of returning to their country of origin, where they face serious danger, arise once again.

Only some of the reasons described here are viewed by the Ministry of Interior as “special reasons” to refrain from dismissing out of hand an application for asylum. Deportation of a person to a place where he or she may face serious danger, without examining the claim for asylum, merely because of the timing of the application, is a violation of the conditions set out in the Refugee Convention, which does not include any such restriction, and which stipulates the prohibition on deporting a refugee to a place where he or she is at risk of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

It should be noted that our position is that the timing of submitting the asylum application may be relevant, but should not serve as a barrier for submitting an application and for examining the asylum claim. The question of when an application was submitted may be significant when establishing the applicants’ credibility and whether their fear of persecution is subjectively founded. However, these are questions that should be examined in the framework of the full asylum procedure and in combination with all of the data arising from the claim, and not as a precondition that may prevent the examination of the claim itself.

We acknowledge that during the period leading up to the procedure coming into force, many applications for asylum were submitted by migrant workers who were residing legally with a staying permit of type b/1 and authorised to work in the caregiving, construction, agriculture, or services sectors. Some of them turned to the Questioning and Identification unit explicitly stating that they do not wish to return to their country of origin because they are interested in continuing their employment in Israel, and not for fear of facing any danger there. It appears that the one year time limit was intended to prevent the need to handle such applications submitted by migrant workers who had been staying in Israel for years. However, as we explained before, amongst those that had arrived in Israel with authorised permits there may also be persons who have a well-founded fear of being persecuted in their country of origin, and who up until that point had not come forward to apply for asylum for various reasons, particularly since as long as they were authorised to remain in Israel they did not fear being deported to a place where they face danger. Therefore, the solution of dismissing cases out of

hand of any person who submits an asylum application after more than a year may lead to the deportation of refugees. The solution to dealing with this difficulty is to dismiss applications in accordance with the facts and claims arising from them, and not according to when they had been filed.

The authorities often argue that a time limit on submitting application is an acceptable practice internationally. However, this assertion is only partially true, and in fact we are dealing with a case of copying one rule of other asylum systems without adopting other parts of these systems. As a general rule, even in countries where there is a time limit on submitting asylum applications, late submission will not lead to the dismissal of an application without it having been reviewed. Even a late submission in other countries, where there exists such a time limit, will be individually examined, but if it is accepted the rights afforded to the person recognized as a refugee may be limited to some extent. In any case, the existence of a time limit on applications in other countries never automatically leads to denying the right not to be deported to a place where a person faces a threat to their life or freedom.

In the United States, for instance, only a person who submitted an application within a year of entering the country (unless there is a special reason for the late application) is entitled to asylum with the right to submit an application for permanent residency and a consequent request for naturalisation.²⁸ However, even an application submitted after more than a year will be examined, and if it is decided that the applicant is a “refugee” as set out in American law, he or she will be entitled to “withholding of removal”²⁹ so long as they face a threat to their life or freedom in their country of origin, and they will also be allowed to work. In addition, the applicant may seek protection under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for other humanitarian grounds. One might question whether limiting the set of rights that a refugee is entitled to under the Convention, because of a late submission, as is the practice in the United States and other countries, is in line with international law. However, in any case, even in those countries where such limitations exist, the basic rights of asylum seekers whose application have not

²⁸ INA § 208(a)(2)(B) (8 U.S.C.A. § 1158(a)(2)(B)).

²⁹ INA § 241(b)(3)(A) (8 U.S.C.A. § 1231(b)(3)(A)).

yet been determined and of refugees, the right not to be deported to a place where they face a real threat to their life or freedom, in accordance with the *non-refoulement* principle, is not repealed merely because the application was submitted late. Yet according to the rules governing the asylum procedure in Israel, a refugee may well be deported for applying late.

4.2. The procedure for dismissal out of hand

As stated above, section 3 of the 2011 procedure allows the dismissal out of hand of an application if the asylum seeker “is not who he claims to be, or that he is not a subject of the country which he stated was his country of citizenship” and section 4 allows dismissal out of hand if “the claims and facts on which the application is based, even if all of them were to be proven, do not constitute any of the elements set out in the refugee convention”.

Refraining from examining an application that does not apparently display grounds for protection under the Refugee Convention may supposedly be administratively efficient. However, there are two problematic issues arising from this section. Firstly, in certain cases a short and basic interview will not reveal the fact that the asylum seeker has grounds for protection under the Refugee Convention, while a comprehensive interview is different both in content and breadth. While the employees of the Questioning and Identification Unit have undergone training on the content of the Refugee Convention, the system itself recognises that they do not possess the necessary skills to conduct the full asylum procedure.³⁰ The ramification of dismissal out of hand is that asylum cases are made by people, who claim a threat to their life, are rejected according to the procedure without conducting full asylum procedures.

We stress that it is not our position that there is a duty to conduct identical asylum procedures for applicants that make claims that display grounds for protection under the Refugee Convention and those whose claims clearly do not meet the criteria of the Convention. “Summary” proceedings are legitimate provided that they comply with international law and

³⁰ It is true that according to the procedure, a decision of an employee of the Questioning and Identification Unit to dismiss an application out of hand must be approved by the head of team, who underwent the training given to the RSD unit. However, when the interview conducted was only a basic one and not a full interview, and when the person choosing the questions is an employee of the Questioning and Identification Unit, it is doubtful whether the record of the interview and recommendation of the unit can provide the necessary basis for the head of the team to make an informed decision.

ensure that every person has access to the asylum process. As explained earlier, the Israeli procedure allows, where a person was not dismissed out of hand, for a deliberation of the application in the framework of the “summary procedure” or by the Committee plenum. In this manner the need to ensure administrative efficiency and allowing the asylum system to function is satisfied. However, adding a third type of route, that was not present in previous Israeli asylum procedures, a dismissal out of hand procedure without a comprehensive interview by personnel trained to conduct full asylum procedures, is inappropriate.³¹ Another flaw in the dismissal out of hand procedure is that contrary to other procedures, it does not allow for a request to be made for reconsideration of the application.

According to international standards adopted by countries that are members of the UNHCR Executive Committee, including Israel,³² summary proceedings must comply with certain conditions:³³

- (i) as in the case of all requests for the determination of refugee status or the grant of asylum, the applicant should be given a complete personal interview by a fully qualified official and, whenever possible, by an official of the authority competent to determine refugee status;
- (ii) the manifestly unfounded or abusive character of an application should be established by the authority normally competent to determine refugee status;

³¹ As noted earlier, the 2001 procedure, amended in 2005, allowed for the rejection of an application that did not display *prima facie* grounds for protection. Yet, the rules governing the procedure were such that even in the framework of this summary procedure, asylum seekers underwent a comprehensive interview by an employee of UNHCR, who possessed adequate training to conduct full asylum procedures. In this respect, the summary procedure in the 2011 procedure is comparable to the summary procedure in the 2011 procedure, not to dismissal out of hand.

³² The UNHCR Executive Committee is a body made up of 85 representatives of the countries that are signatories to the Convention, including Israel. The Committee publishes conclusions relating to interpretations of the Convention Relating to the Status of Refugees. The decisions of the committee are accepted only when all the countries which are members of the committee, including Israel, unanimously agree on them, and thus have gained special status as a tool for interpreting the Convention (see: James C. Hathaway, *THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW* (2005), p. 112-113). Some Refugee Law experts even regard some of the conclusions of the Executive Committee as evidence of the existence of customary international law regarding the principles enshrined in them (see: Agnès Hurwitz, *THE COLLECTIVE RESPONSIBILITY OF STATES TO PROTECT REFUGEES* (2009), p.13).

³³ EXCOM no. 30 (Session XXXIV), The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum (1983), article (e).

(iii) an unsuccessful applicant should be enabled to have a negative decision reviewed before rejection at the frontier or forcible removal from the territory.

As explained above, none of these three conditions are met in the procedure for dismissal out of hand present in the new asylum procedure. Prior to the procedure coming into force, the UNHCR had informed the Ministry of Interior that the procedure for dismissal out of hand is not in line with international law, but this did not lead to a change in the procedure.³⁴

4.3. Granting a permit pursuant to Article 2(a)(5) of the Entry to Israel Law instead of a staying permit of type b/1

As we explained above, according to the asylum procedure, an applicant whose claim has not been dismissed out of hand will be granted a staying permit in accordance with Article 2(a)(5) of the Entry to Israel Law. This permit replaces the b/1 permit that had been granted under the previous procedures to applicants whose claims had not been dismissed in the summary procedure.³⁵ While staying permits of type b/1 explicitly grants the right to work, the situation relating to 2(a)(5) permits is vague.

The Entry to Israel Law is silent about the rights afforded under this type of permit, and unlike other permits, this type of permit is not specified in the Entry to Israel Regulations. In proceedings that took place at the High Court of Justice, the State committed not to enforce the prohibition on employment of persons holding this kind of permit only with regard to those entitled to “temporary group protection” and not in relation to other asylum seekers that are granted this type of permit while waiting for the outcome of their asylum application. Nevertheless, the court stated that “we assume that enforcement measures will not be taken against employers of a person whose asylum claim is pending.”³⁶

³⁴ Letter from UNHCR relating to its comments on articles 2-4 of the procedure to Attorney Yonatan Berman of the Hotline for Migrant Workers, dated 12 January 2011.

³⁵ See above, footnote 21.

³⁶ HCJ 6312/10, *Kav La'Oved v. Government of Israel* (16 January 2011). On the practical and symbolic problems with this policy see: Yuval Livnat, *Refugees, Employers and “Practical Solutions” at the High Court of Justice: Following HCJ 6312/10, Kav La'Oved v Government of Israel*, 3 *MISHPATIM AL-ATAR* 23(2011) (Hebrew).

4.4. Non-disclosure of materials on which a decision is based

When an application is dismissed out of hand, the procedure states that the assessment, which serves as the basis for the decision to reject the application, will not be handed over to the asylum seeker. Similarly the procedure determines only the right of asylum seekers to receive a summary of the evaluation of the RSD unit when an application has been rejected in “summary proceedings” or after a Committee plenum deliberation. These rules contradict the legal principle enshrined in Israeli statutes and caselaw, which require allowing a person affected by a decision to access all the materials on which the decision was based, as part of the right to argue a case and the right to bring a case under judicial review.³⁷ Although the law contain limitations, in some cases, on receiving information from authorities, where internal discussion and records are involved,³⁸ it is doubtful whether one could argue that an appraisal that forms the basis of a decision to reject an asylum claim can be defined as “internal information” of this sort. In any case, according to caselaw, even where “internal information” is involved, the authority must consider whether to make it available, when the level of interest of the person requesting the information carries significant weight.³⁹ As for asylum seekers, the court has ruled in the past that although minutes of the Advisory Committee on Refugees are “internal information” of the aforementioned type, the interest of the asylum seeker to receive the reasons for the decision in their case in order to be able to challenge it justifies handing it over.⁴⁰ This same rationale applies in full to the evaluations of the Questioning and Identification Unit and those of the RSD Unit.

It may be possible to think of cases where other interests may prevent disclosure of the full assessment, for example where there is information that may jeopardize public safety or state security, or when it includes information that may expose intelligence sources. However, to the best of our knowledge, the assessments of the two units usually do not contain such information, and if they did, then it is only on rare occasions. In such cases it would seem that there would be no choice but to disclose only a summary of classified information. However,

³⁷ See, for instance: H CJ 4914/94 *Terner v. the State Comptroller*, Piskei Din 49(3) 771.

³⁸ Article 9(b)(4) of the Freedom of Information Law, 1998.

³⁹ Admin. Appeal 9135/03 *The Council for Higher Education v. Ha'aretz Newspaper Publishing*, Piskei Din 60(4) 217

⁴⁰ Admin. Petition (Jer.) 22336-04-10 *Abdul v. the Supervisor of the Freedom of Information Law* (21 September 2010).

such rare cases cannot justify the sweeping practice of disclosing only summary information instead of the full disclosure of information that is needed in order to adequately deal with the decision to reject the claim.

4.5. The Exclusion of Nationals of Enemy or Hostile States

Section 10 of the new procedure states (similarly to section 6 of the 2001 procedure) that:

“The State of Israel reserves the right not to absorb into Israel and not to grant permits to stay in Israel to subjects of enemy or hostile states – as determined from time to time by the authorized authorities, and so long as they have that status, and the question of their release on bond will be considered on a case by case basis, according to the circumstances and to security considerations.

Israel appreciates the UN Refugee Agency’s notice according to which until a comprehensive political settlement is reached in our region it will make every effort to find refugees asylums [sic] in other countries.”

This section does not conform to Israel’s obligations under international law. According to the Refugee Convention the definition of “refugee” under Article 1.A(2) is cogent and cannot be conditioned.⁴¹ Israel is not permitted to unilaterally declare that asylum seekers of a particular nationality are not refugees as far as it is concerned. Additionally, Article 3 of the Refugee Convention prohibits the discrimination of refugees, amongst other reasons, for their nationality. A similar prohibition can be found in the International Convention on the Elimination of All Forms of Racial Discrimination, which Israel is party to.⁴²

Initially, this provision in the Israeli procedure was intended as a practical solution to Israel’s refusal to recognise refugees from particular countries and grant them protection within its border, by resettling them in a third country with the assistance of the UNHCR. This solution has utterly failed in the matter of asylum seekers from Sudan. As far as we know, there is no plan for their resettlement in another country. On the one hand, Western countries are unwilling to enable Israel to shed its obligations through them; on the other hand, Israel is

⁴¹ See Article 41(1) of the Refugee Convention.

⁴² Article 1(1) of the Convention prohibits discrimination on the basis of national or ethnic origin.

also not interested in this solution since it is afraid that it will create a pull factor for a new wave of refugees. Section 6 (currently section 10) created a legal vacuum, in which thousands of people are presently living without recognition as refugees. This provision has also been the (dubious) legal basis for the detention of dozens of asylum seekers from Sudan for prolonged periods of 12-18 months throughout 2006. Some of those same asylum seekers (those who originated from Darfur) consequently received temporary residence permits, and others reside in Israel to this day in this legal vacuum: on the one hand their claims for asylum are not examined; on the other hand the State of Israel claims that they are not refugees.

4.6. Unreasonable time limits for challenging decisions

The procedure for handling asylum seekers states that a person whose application was dismissed out of hand may be deported within 72 hours after receiving the decision.⁴³ As explained above, an asylum seeker whose application has been dismissed out of hand may not submit a request for reconsideration, and the only legal recourse left to him or her is to file an administrative petition against the decision. In practice, the Ministry of Interior has recently been informing asylum seekers whose applications have been rejected out of hand that they must leave the country within seven days.

Similarly, the procedure states that a person, whose application is denied in a final decision after having been deliberated in the “summary procedure” or by the Committee plenum, may be deported within 72 hours from the date of receiving the decision.⁴⁴ In such cases, according to the procedure, the applicant may submit a request for reconsideration within two weeks of the refusal date.⁴⁵

These time periods are patently unreasonable. Filing a court petition against a decision to dismiss an asylum application as well as submitting a request for reconsideration requires raising the necessary funds to pay for legal fees and finding legal counsel, and it also requires the attorney to invest considerable amounts of time for researching the conditions in the

⁴³ Article 4.c of the procedure.

⁴⁴ Articles 6.f and 7.h of the procedure.

⁴⁵ Article 9.a(1) of the procedure.

applicant's country of origin. In order to submit a request for reconsideration the asylum seeker must act to obtain documents that had not previously been presented to the Ministry of Interior. Sometimes such documents exist outside Israel. Often weeks will pass before the Ministry of Interior responds to requests made by asylum seekers to receive documents such as the summary of the evaluation of the RSD unit, asylum interview record and minutes of deliberations of the Advisory Committee on Refugees.

Such time limits, after which asylum seekers are exposed to detention and deportation, infringe on their right to exhaust all legal avenues and their right to access the courts.

4.7. The procedure does not include provisions relating to the *non-refoulement* principle outside the Refugee Convention (Complementary Protection)

According to the procedure for handling asylum seekers, the only question that is examined both in the basic and in the comprehensive interviews is whether the applicant meets the criteria set out in the Refugee Convention. Yet the principle of *non-refoulement* also applies to other situations that are not currently examined by the asylum system.

The Refugee Convention applies only when there is a well-founded fear of being persecuted for one of the five grounds set out in the Convention – religion, race, nationality, membership in a particular social group or political opinion. However, the High Court of Justice in Israel has ruled that under customary international law and under domestic Israeli law, the principle of *non-refoulement* applies not only to refugees, but also to any case of return to a place where a person's life or liberty is threatened.⁴⁶ In addition, Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits the deportation of a person to a place where they may be subjected to torture;⁴⁷ and it is customary to interpret Articles 6 and 7 of the International Convention on Civil and Political Rights as prohibiting deportation to a place where there is threat to a person's life or risk of torture or cruel, inhuman or degrading treatment or punishment.⁴⁸

⁴⁶ HCJ 4702/94 *Al-Tai v. Minister of the Interior*, Piskei Din 49(3) 843, 848

⁴⁷ See, for instance: *Tapia Paez v. Sweden*, Communication no. 39/1996, UN doc. CAT/C/18/D/39/1996 (1997).

⁴⁸ See, for instance: *GT v. Australia*, Communication no. 706/1996, UN doc. CCPR/C/61/0/706/1996, para. 8.1-8.2 (1997).

The procedure is silent about examining potential threats not based on one of the five grounds set out on the Refugee Convention, and there is no other mechanism in place for examining such matters.⁴⁹

As we stated above, due to the limited scope of this report, only the central problems associated with the procedure for handling asylum seekers have been presented here.

5. Problems with the practices of the asylum system

Apart from the problems constructed into to the procedure for handling asylum seekers, many difficulties arise from its implementation. In this chapter we shall examine how the manner in which the procedure is being implemented leads to infringements of the rights of asylum seekers to a fair process, and to the wholesale rejection of asylum claims.

5.1 The interview methods

Employees of the RSD unit present themselves and refer to themselves as “interrogators”. The use of this term rather than “interviewers” is the story of the Israeli asylum system in a nutshell. This is not merely a title but a description of the way the employees of the unit regard their role and the way they conduct themselves. Asylum interviews, rather than being interviews where an attempt is made to factually examine a person’s claims, are conducted as though they were a police interrogation of a suspect. The underlying assumption during these interviews is that the applicant is lying, and that the aim of the process is to uncover these lies. It should be noted that several of the employees of the RSD unit are former police officers, and it may well be that methods used in police investigations have seeped into the world of asylum procedures, partially explaining why asylum interviews are conducted as they are.

⁴⁹ Recently several Israeli rulings criticized the fact that the Ministry of Interior does not examine the issue of threat for reasons not specified in the Refugee Convention. In Admin. Petition (center) 47692-07-11 *Joseph v. Ministry of Interior* (26 September 2011) the Court instructed the Ministry of Interior to conduct such an examination in the case of an asylum seeker, whose application under the Refugee Convention had been rejected.

However, asylum proceedings are not police investigations. The UNHCR handbook stresses that, when designing asylum procedures, special consideration should be given to the fact that asylum seekers will generally be in a very sensitive state: they are in an alien environment and may experience significant difficulties, both technical and psychological.⁵⁰ While the employees of the RSD unit are convinced that aggressive behaviour is a sure method of getting the asylum seeker to reveal the truth, research has shown that aggressive behaviour in asylum interviews where the interviewer (or “interrogator”) displays distrust, will pressure the interviewee into trying to “please” the interviewer and providing an answer that will appease him. Consequently, interviewees may change their answers during an interview, not because they are not credible, and may even develop heightened levels of anxiety and insecurity throughout the interview, exposing them even further to the interviewer’s suggestions and leading questions.⁵¹

Complaints of asylum seekers, who testify to aggressive and inappropriate behaviour of the RSD unit employees, are numerous. Additionally, it appears that where asylum seekers had previously been interviewed by UNHCR and were found eligible for protection under the Refugee Convention, special effort is made by the unit to undermine UNHCR’s findings by employing particularly aggressive behaviour towards the applicants.

Such was the case of A., an asylum seeker from Ethiopia, who had been interviewed by UNHCR during the period that preceded the establishment of the RSD unit. UNHCR found that he was credible and determined that he met the criteria set out in the Refugee Convention because he had been persecuted in Ethiopia for suspicion of political activity. After the establishment of the RSD unit, A. was invited to another interview. The first interview lasted two whole working days. At the outset of the interview, and before he was even asked a single question, one of the interviewers made it clear to him that he is evidently lying, and that in his own interest he should confess immediately so as not to waste everyone’s time. During the interview a second interviewer joined in and both interviewers took turns asking

⁵⁰ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979), para. 190.

⁵¹ Jane Herlihy & Stuart W. Turner, *The Psychology of Seeking Protection*, 21 INT’L J. REFUGEE L. 171, 191-192 (2009).

questions. Considerable parts of the interview were conducted in raised voices, with the interviewers accusing A. repeatedly of lying and pressing him to admit it.

Such was also the case of R. R. was found credible by UNHCR, however was required to undergo another interview by the RSD unit, where at the outset of the interview she was told that she is a liar and should confess her lies.

A common method used by the unit interviewers is to insist that the interviewees reply with a simple “yes” or “no” without enabling them to explain more complex situations. For example, R., an asylum seeker persecuted because of his brother’s political activities, was presented with a press article, which stated that his brother, a well-known political figure, had previously worked in a newspaper that the R. did not know. The interviewer presented R. with three possibilities: “Either your brother is lying, you are lying, or I am lying. So you’re saying that I’m lying. Yes, or no?” R.’s attempts to explain why he was not familiar with his brother’s place of employment before he had been born were all cut short by the interviewer, who insisted on receiving only a “yes” or “no” answer.

5.2. The methods employed by the Ministry of Interior to assess credibility

As we previously explained, the asylum interviews are excessively long, during which, as in police investigations, interviewers are repeatedly asked the same questions, sometimes very aggressively, in an attempt to uncover “contradictions”, even where they do not exist, and while attributing “lack of credibility” to the asylum seekers for every mistake, whether it exists in reality or in the interviewer’s imagination. The interviews extend for long hours, as they focus on peripheral matters and insignificant and marginal details, that no person can be expected to remember. Every mistake or lapse of memory are attributed to “lack of credibility”, which consequently justifies rejecting the asylum claim.

In court proceedings held at the Jerusalem District Court, The Ministry of Interior revealed its position that this is indeed its method, since, in its opinion: “Naturally, when a person’s version is not authentic, the contradictions will be expressed in details that are not at the heart of the version.”⁵² However, what appears to the Ministry of Interior as “natural”, fails to

⁵² Admin. Petition (Jer.) 37241-02-11, Respondents’ submission to court (14 April 2011), para. 35.

conform to international practices, which, upon examination, reveal that credibility and consistency of asylum seekers are not examined by focusing on peripheral details. Similarly, it is irreconcilable with case law in Israel regarding examination of credibility of witnesses, and is not in line with psychological research relating to credibility of asylum seekers.

High Court of Justice rulings on credibility of witnesses in criminal proceedings have repeatedly stipulated that a person is not an automatic machine, contradictions and inaccuracies in a witness's accounts do not necessarily lead to the conclusion that they are lying, and in fact an exaggerated memory of details may be damaging to a witness's credibility.⁵³ The rulings further stipulated that when examining the credibility of a witness's account there is no place for delving into details, but rather into the question of whether the entirety of the version is credible and if the "hard core" of the account is consistent.⁵⁴ Just recently, in a ruling of the High Court of Justice, which rejected the appeal over the former President's conviction of rape, the court reiterated the assertion that human nature and memory require that a person's memory of events that had occurred sometime in the past should be examined according to the credibility of their description of the "core of events" and not the minute details.⁵⁵

This principle is implemented worldwide when evaluating the credibility of asylum seekers. United States case law,⁵⁶ Canadian Immigration and Refugee Board guidelines,⁵⁷ and Australian case law,⁵⁸ all stipulate that one should not determine the credibility of an asylum seeker based on inaccuracies in peripheral matters that are not at the core of the asylum claim. Psychological research on asylum procedures explain that the human memory tends to undergo a reconstruction every time an event is recounted, and therefore one should not

⁵³ CA 1258/03 *Anonymous v State of Israel*, *Piskei Din* 58(6), 625, 636

⁵⁴ CA 993/00 *Nur v State of Israel*, *Piskei Din* 56(6), 205, 232

⁵⁵ CA 3372/11 *Katzav v State of Israel*, (10 November 2011), para. 141.

⁵⁶ See, for instance: *Vilorio-Lopez v. INS*, 852 F.2d 1137, 1142 (1988); *Kwok v. Gonzales*, 455 F.3d 766, 769 (2006); *Giday v. Gonzales*, 434 F.3d 543, 551 (2006).

⁵⁷ Immigration and Refugee Board, Refugee Protection Division, Assessment of Credibility in Claims for Refugee Protection, 2004, section 2.3.4, available at: http://dsp-psd.pwgsc.gc.ca/collection_2007/irb-cisr/MQ21-42-2004E.pdf.

⁵⁸ See, for instance: *Guo v. Minister for Immigration and Ethnic Affairs*, 64 FCR 151, 194 (1996).

expect an asylum seeker, who has been interviewed on several occasions, to describe the same event in an identical manner, and some inconsistencies are to be expected.⁵⁹

Nevertheless, both the Questioning and Identification Unit and the RSD Unit continue to reject asylum claims based on minor contradictions or lack of knowledge of details that are peripheral to the asylum claim. For example, the assessment of the RSD unit in the case of A. shows that he was found not to be credible because he could not remember the price of the bus fare from a village in West Sudan to Sudan's Capital, Khartoum, a trip he made only once in his lifetime, and he could also not recall the colour of the bus in which he rode. A., another asylum seeker from Ethiopia, was found not to be credible because in the initial interview with him he said that when he left the country he had in his possession his school graduation certificate and a document of release from prison, while in the second interview he added that his identification card was also in his possession at that time (a matter he was never asked about in the first interview). Another asylum seeker, G., was deemed not credible because in one interview she said she had heard rumours that her father had died in prison and therefore believes that he is longer alive, and in another interview she said that she does not know whether her father is alive or dead.

Recently the RSD Unit interviewed an asylum seeker, represented by the Tel Aviv University Refugee Rights Legal Clinic, in the presence of his attorney. In the course of the interview the asylum seeker described an event where he was held in custody, interrogated and tortured. When asked by the interviewer how many persons interrogated him, the asylum seeker replied that since he was blindfolded during the interrogation he cannot give an accurate answer, but based on the voices he heard during the interrogation, he assumes there were 5 or 6 interrogators. The RSD interviewer replied: "In a previous interview you claimed that it was 6 or 7 persons. How do you explain this contradiction?"

The assessments of the RSD unit are often prone to speculation. For instance, B. was found not to be credible because he told the interviewer that he sprained or broke his leg in prison but did not receive medical care, and later said that he worked as a waiter two years after the incident. The conclusion of the RSD unit, without conducting any medical examination or

⁵⁹ Trevor Trueman, Reasons for refusal: an audit of 200 refusals of Ethiopian asylum-seekers in England, 23(3) J. IMMIG. ASYLUM & NAT'LITY L. 281 (2009), p. 294; Herlihy and Turner, *supra* note 51

requesting an expert medical opinion, was that it cannot be possible that B. sprained or broke his leg and worked in a physically demanding job two years later, without having received medical care.

Another example of speculations on which the Ministry of Interior bases its assessments can be seen in the case of L., a national of Columbia. L. testified that one of his closest friends, who had been living in his house, had been engaged in illegal activities in the service of the paramilitary groups, a fact which only became known to L. ex post facto. The RSD unit concluded that “it does not make sense” that L. knew nothing of his friend’s actions, and therefore his claims were found to be unreliable.

R., an asylum seeker from Ethiopia, explained in her interview that throughout her childhood her step-mother had been arrested on several occasions because of her father’s political activities, and that she assumed that she herself had not been arrested at that time because of being underage. The interviewer writing the assessment determined that this is an unreasonable explanation, without having checked if there exists a distinction between the arrest of minors and adults in Ethiopia.

Another flawed method for examining an applicant’s credibility is using “information tests”, which are impassable. W., an asylum seeker from Burma, was asked in a basic interview about the name of the “director” of the university she had attended, and was found not credible because she got his name wrong. Her application was dismissed out of hand, and yet she was later able to produce documentation of having studied at the university she had claimed to attend, as well as photos of her graduation ceremony at that very same university.

M., an asylum seeker from Eritrea, was interviewed by the Questioning and Identification Unit, which doubted the fact that she was a national of Eritrea. M., was presented with a photo of a remote dirt road and a photo of a wall with an adjacent car that, according to the interviewer, were taken in her village. “This is a very famous road”, she was told regarding the dirt road. M. could not name the places that appeared in the photos and was therefore found to be not credible and not a national of Eritrea. Later, while researching various internet websites, these two photos were traced on the website of a tourist who had visited the area.

A., an asylum seeker from Sudan, who had visited the capital Khartoum only once for one day on his way from Darfur out of the country, was asked during the interview, conducted by the RSD unit, detailed questions about the neighbourhood he had stayed in during the single night he spent in the capital. His inability to provide details of street names in this neighbourhood, through which he had passed two years prior to the interview, led the RSD unit to conclude that he is not credible and cannot possibly be a citizen of Sudan.

These are only a few examples of many. It appears that to this day not a single asylum seeker has been found credible by the RSD unit. It is a small wonder. Put any person in a room for long and exhausting hours, ask long-winded questions, be aggressive, cling to trivial details that are irrelevant to the core of the claim, focus on peripheral matters relating to events that had occurred years ago, ask unreasonable questions in geography, and you will always find, as if miraculously, contradictions, inconsistencies or lack of knowledge. Hundreds of cases where asylum seekers were similarly rejected for reasons of credibility, reveal that the main area of expertise of the Questioning and Identification unit and the RSD unit is in the manufacturing of contradictions.

5.3. Research and information on country of origin

One of the elements requiring a level of expertise and professionalism of the highest order whilst examining asylum claims is conducting research about the conditions in the country of origin of asylum seekers. This research is required both in order to examine the question of whether a person's fear of being persecuted is objectively founded and in order to examine whether the asylum seeker is credible.

According to the UNHCR handbook and accepted international standards for examining asylum claims, in order for a person to have a well-founded fear of persecution, the existence of a subjective fear is insufficient, and it must be objectively grounded. It does not necessarily follow that this requires the existence of external evidence, but that the threat to a person is a result of events that exist in reality. For example, if a person who has a subjective fear of being persecuted by the communist regime in the USSR and therefore is unwilling to return to Russia in 2011, their fear is not grounded in objective reality given that the communist regime is no longer in place. A person who claims that to be persecuted due to membership of the opposition party whereas objective data points to their membership of the

ruling party in their country of origin, their claim is likely to be rejected as well, be it because their fear is not objectively grounded, or because it is found that the claim is not credible.

An examination of the background in a person's country of origin requires the ability to gather information from different and numerous sources and to crosscheck them, to distinguish between reliable sources and unreliable sources, to distinguish between relevant and irrelevant sources, and between outdated and updated information. It also requires caution about deriving conclusions from data. However, it would seem that the most crucial element is the creation of a full picture about the situation in the country of origin, a coherent picture that does not over-simplify the findings. It is very easy to come to conclusions about the existence or lack of a threat based on a selective choice of sources. It is much more difficult to create a full picture, where clear conclusions are derived only after a coherent and considered examination of all the relevant sources have been undertaken.

To the best of our knowledge, there is only one employee at the RSD unit who is responsible for conducting research about the countries of origin of asylum seekers. His job description is "Head of Research and Information Branch", even though as far as we can tell he is the only person employed in this "branch".

To date, all of the opinions of the "Head of Research and Information Branch" that we have come across reveal unprofessional and problematic work, at best, and biased research, at worst. The opinions dealing with the situation in the countries of origin of asylum seekers habitually present information sources that point to lack of danger or an improvement in the situation, even where there are a numerous other sources, which point to other trends. Since the information presented to the Advisory Committee on Refugees on the country of origin is usually derived exclusively from the RSD unit, the presentation of selected sources of information and failing to mention other sources of information that point to a different picture, amount to misleading the Committee, and do not enable it to reach a decision based on all the relevant data pertaining to the country of origin under discussion. Moreover, some of the information presented to the Committee by the RSD unit includes partial quotes and translations from sources without submitting the full information sources, and which on further inspection of the full sources reveal that they in fact point to rather different trends to those presented to the Committee. Another serious flaw is the manner in which conclusions are derived from the sources of information regarding threats to various groups.

One of the most absurd examples we have encountered relates to an asylum seeker represented by the Tel Aviv University Refugee Rights Legal Clinic, who claimed a well-founded fear of being persecuted in Morocco, his country of origin, because of his sexual orientation.⁶⁰ As opposed to the many sources of information that the asylum seeker's legal representative possesses, which attest to the persecution of homosexuals in Morocco, the RSD unit presented two sources.

The first source was a webpage of what was presented by the unit as an "organisation for the rights of homosexuals in Morocco" named "Basama". The conclusion of the RSD unit was that the very existence of such a group testifies to the fact that homosexuals are not persecuted. However, an investigation conducted by the applicant's legal representative and an expert opinion she received, point to the fact that the said "Basma" group is nothing more than a webpage supporting homosexuals and not an organisation. The use of a webpage by the RSD unit without any corroboration by an external source and without checking other sources for indications of the existence of the "organisation" or the character of the said "organisation", particularly in an age when anyone can open a webpage and write whatever they please on it, points to a superficial and unprofessional examination. Moreover, it points to a failure in deduction powers, for even if the webpage had indicated the existence of an organisation for the protection of the right homosexuals, the necessary conclusion is not that homosexuals are not persecuted in Morocco. Such a conclusion would depend on the substance of the organisation and its operation, the question of how free it is to act, the question of the authorities' treatment of the organisation, and so on and so forth. The mere existence of an organisation does not attest to a tolerant attitude of the authorities towards homosexuals. Indeed, in many places it is precisely groups whose rights are most severely infringed upon that are in need of organisations to protect them.

The second source of information that the RSD unit based its decision on in this case was a press article about the performance of the singer Elton John in Morocco. The appearance of a well know homosexual singer, so deduced the RSD unit, points to the fact that homosexuals

⁶⁰ This case was covered in a press article by Tomer Zarhin, "How Elton john determined the fate of the refugee from Morocco", Ha'aretz 9 September 2011 (Hebrew). The full details of this case and the documents the report refers to were received from the asylum seeker's legal representative, attorney Anat Ben Dor of the Tel Aviv University Refugee Rights Legal Clinic.

are not persecuted. It is difficult to see how one could come to such a conclusion from the information about the performance, and certainly, the very fact of the performance, without any corroborating information, cannot possibly be sufficient to make deductions about the situation of homosexuals in Morocco.

The selective use of sources of information by the RSD unit was also apparent in an “opinion” presented by the unit to the Advisory Committee about Somalia. The opinion was requested by the Committee so that it could consider whether a policy of “group protection” should be implemented with regard to nationals of Somalia. Based on this opinion, the committee decided not to grant “group protection” to citizens of Somalia. In this report we do not mean to contest the final position reached by the RSD unit and the Advisory Committee (although it is the position of the Hotline for Migrant Workers, which is supported by practice in numerous countries and by national and international courts, that this is a wrongful decision, at least where residents of south and central Somalia are involved). We mean merely to examine the methodology of the RSD for examining the situation in south and central Somalia.

The Advisory Committee on Refugee was presented with an “opinion”, written by the “Head of Research and Information Branch” at the RSD unit in December 2010. Although there are dozens of sources on the situation in Somalia (which indicate that the situation is difficult indeed), the “opinion” included only three sources: the UK Home Office Operational Guidance on Somalia from July 2010 ⁶¹ and two items published on the UNHCR website on February and April 2009. ⁶² Even these three sources were only partially quoted. Although the said “opinion” included footnotes with references to other sources, a comparison of the opinion with the UK Home office Guidelines reveals that these references were copied word for word from the footnotes in the UK document.

As opposed to these three sources, the “opinion” refrained from bringing to the attention of the Advisory Committee numerous sources indicating the threats posed to anyone returned to

⁶¹ UK Home Office Operational Guidance Note – Somalia, July 2010.

⁶² UNHCR, Somalia: 60,000 return to unstable conditions in capital - UN agency, April 15, 2009, available at: <http://www.unhcr.org/refworld/docid/49fab9d71e.html>; UNHCR, Over 40,000 displaced Somalis return to capital despite clashes, says UN agency, 27 February, 2009 available at: <http://www.un.org/apps/news/story.asp?NewsID=30038&Cr=Somali&Cr1>.

Somalia. For example, the central document one would expect anyone researching Somali asylum cases to turn to is the UNHCR Guidelines from May 2010.⁶³ These guidelines state, based on a large number of sources, that the situation in south and central Somalia is so dire, that at this stage there is a need to abstain from returning Somalia nationals to this area. They further stipulate that residents of this area will not be able to find protection in other areas of Somalia. Disregarding this source in the “opinion” is concerning, given that a High Court of Justice ruling has determined that the UNHCR is a body with expertise and information sources that the State of Israel lacks, and therefore its recommendations must be given significant consideration.⁶⁴ Even if ultimately the Ministry of Interior is not bound to accept the recommendations of the UNHCR, it is still required, at the very least, to seriously consider it and to explain why it finds the factual information about the situation in Somalia contained in the guidelines and written by experts to be unacceptable. However, it is hard to justify the total disregard of the guidelines and abstaining from disclosing it in full in written opinion, so that the members of the Advisory Committee could come to a decision based on full knowledge of the situation.

Similarly, the “opinion” was meticulous in bringing to the reader (and more importantly to the members of the Advisory Committee on Refugees, whose decision was based on it), only the UK policy regarding nationals of Somalia. The readers of the opinion cannot guess that many other countries have adopted a policy of refraining from returning Somali nationals, or at the very least those from south and central Somalia. For example, the “opinion” does not reveal that towards the end of 2010 the United States declared that the situation in Somalia is such that it would endanger any person deported to it and therefore extended the “group protection” that has been afforded to nationals of the country for years.⁶⁵ The “opinion” also fails to mention that many European states refrain from deporting nationals of Somalia.⁶⁶ The

⁶³ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Somalia, 5 May 2010, HCR/EG/SOM/10/1, available at: <http://www.unhcr.org/refworld/docid/4be3b9142.html>

⁶⁴ Appeal of Admin. Petition 5107/08 *Anonymous v Minister of the Interior*, 5 May 2009.

⁶⁵ Department of Homeland Security, US Citizenship and Immigration Services, Extension of the Designation of Somalia for Temporary Protected Status, Federal Register / Vol. 75, No. 211 / Tuesday, November 2, 2010 / Notices 67383, available at: http://www.justice.gov/eoir/vll/fedreg/2010_2011/fr02nov10.pdf.

⁶⁶ See, for instance: *Sheekh v. The Netherlands*, European Court of Human Rights, Application no. 1948/04, 11 January, 2007, paras. 40 & 44

only example the RSD unit chose to include in its opinion was the UK, which has chosen a rather exceptional policy regarding nationals of Somalia. The UK's exceptional policy and the problem of relying on a single country became evident after the writing of the "opinion" of the RSD unit, when the UK's policy regarding Somalia was rejected by the European Court of Human Rights, which ruled in June 2011 that the policy is illegal, and that barring exceptional circumstances, the deportation of a person from south and central Somalia was a violation of international law because of the situation in this country.⁶⁷

The Ministry of Interior's "opinion" also refrained from including a series of published data that any basic course on how to conduct research for the purpose of determining an asylum should teach: reports of human rights organisations,⁶⁸ U.S. State Department human rights reports⁶⁹ and so on and so forth. Moreover, the two articles taken from the website of UNHCR and quoted in the opinion⁷⁰ were only quoted in part, and sections detailing the dire situation in Somalia were omitted. These two articles, which described the return of internally displaced persons to the capital city Mogadishu, pertained to the first third of 2009. The opinion was composed at the end of 2010 and during the period of time that had passed since the first third of 2009 many other sources of information were published indicating further deterioration in the situation.

Another opinion was presented to the Committee in the case of P., an Ethiopian national and a member of the ethnic Oromo group. P. said in the interview conducted by the RSD unit, that he can only speak basic Amharic, and that the central language in which he is versed is the language spoken by the Oromo, like many other members of this ethnic group which live in Ethiopia in areas populated mainly by Oromos. In its opinion, the Ministry of Interior concluded that his claim is not credible since it is inconceivable that that he should only speak basic Amharic whilst it is *the* official language spoken in Ethiopia. To support the claim that Amharic is the official language in Ethiopia the opinion referenced a webpage

⁶⁷ *Sufi & Elmi v. United Kingdom*, European Court of Human Rights, Applications no. 8319/07 & 11449/07, 28 June 2011.

⁶⁸ See, for example, Human Rights Watch, **Somalia: Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia** (April 2010), available at: <http://www.hrw.org/en/reports/2010/04/13/harsh-war-harsh-peace>.

⁶⁹ See, for example: US Department of State, 2010 Human Rights Report: Somalia, April 8, 2011, available at: <http://www.state.gov/documents/organization/160144.pdf>.

⁷⁰ See above, footnote 62.

about the Amharic language from the UCLA website.⁷¹ However, an examination of the website reveals that it does not state that Amharic is *the* official language in Ethiopia, but rather *one of the official languages* in the country. Another page on that same website indicates that the Oromo language is also an official language in Ethiopia, and that it is used in state administration, in commerce and in the media.⁷²

In another case, the RSD unit recommended to reject the application of S., a national of Ghana, who claimed to be persecuted for reasons of sexual orientation, and who was represented by the Tel Aviv University Refugee Rights Legal Clinic. The decision was based on a picture showing men dressed in women's clothing marching in the streets of Ghana. The unit told the Advisory Committee on Refugees that the picture proves that "homosexuals proudly and gloriously march in the streets of Ghana". Yet a search conducted by the applicant's attorney revealed that the said picture appears on an internet website with the caption "This is not a gay parade", explaining that it captured a prank carried out by students from the university of Ghana.

Additionally, in a series of opinions the RSD unit recommended the rejection of asylum claims made by activists of the OLF (Oromo Liberation Front) based on the argument that low-ranking activists in the organisation are not persecuted. The only basis for this assertion was two British court rulings from 1997 and 2002.⁷³ At the same time, the RSD unit did not bother to bring to the attention of the Committee, nor to the courts in the framework of proceedings held in the case, the fact that two consequent rulings, from 2005 and 2007, had overruled these assertions and stipulated that even low ranking OLF activists, and even sympathisers of the organisation, may be exposed to persecution.⁷⁴ They also did not take the trouble to bring to the attention of the Advisory Committee the fact that case law in the U.S.⁷⁵

⁷¹ The opinion referred to the following webpage:

<http://www.lmp.ucla.edu/Profile.aspx?menu=004&LangID=7>.

⁷² <http://www.lmp.ucla.edu/Profile.aspx?LangID=211&menu=004>.

⁷³ Birru (Ethiopia) [1997] 14775; Fuad Feki Abbanega (Ethiopia) [2002] UKIAT 02620.

⁷⁴ HA (OLF members and sympathizers – risk) Ethiopia [2005] UKAIT 00136; MB (OLF and MTA – Risk) Ethiopia CG [2007] UKAIT 00030.

⁷⁵ *Makonnen v. INS*, 44 F. 3d 1378 (1995); *Worku v. Mukasey*, 268 Fed. Appx (2008).

and Australia⁷⁶, as well as reports of research institutions⁷⁷ and of human rights organisations⁷⁸ all support the position that even low-ranking activists are persecuted.

5.4. Examination of credibility in the basic interview and in proceedings for dismissal of out hand

As explained above in the chapter on the inherent flaws of the procedure for handling asylum seekers, the Questioning and Identification unit may dismiss an application out of hand after a basic interview and without passing on the case to the treatment of the RSD unit only in those cases where “the claims and facts on which the application is based, even if all of them were to be proven, do not constitute any of the elements set out in the refugee convention”. In other words, the Questioning and Identification unit is not in any way supposed to ascertain whether the asylum seeker is credible, but to work on the assumption that the applicant’s statements are true.

Nevertheless, many applications are dismissed out of hand after the Questioning and Identification unit determines that the asylum seeker is not credible, while overstepping its authority.

Such, for example, was the case discussed in a ruling given by the District Court in a petition filed by a Chinese national, who claimed that if returned to his country he would be castrated, but whose claim was dismissed out of hand. The court ruled that the Questioning and Identification unit overstepped its authority, since its role was not to determine whether the applicant’s claims were true, and working on the assumption that the claims are true in that case, the asylum seeker should, at least supposedly, have been entitled to protection.

⁷⁹Similarly, the District Court adjudicated a petition by a national of Kenya, who claimed to be persecuted for political reasons and her claim was dismissed out of hand. Here too the

⁷⁶ 0808466 [2009] RRTA 250 (10 March 2009); 0902046 [2009] RRTA 1188 (11 November 2009).

⁷⁷ CORI, Treatment of members of the Oromo Liberation Front (OLF) including members of their family, available at: <http://www.unhcr.org/refworld/pdfid/4a803f862.pdf>.

⁷⁸ Human Rights Watch, **Suppressing Dissent: Human Rights Abuses and Political Repression in Ethiopia’s Oromia Region** (May 2005), available at: <http://www.hrw.org/sites/default/files/reports/ethiopia0505.pdf>; Human Rights Watch, World Report 2011, January 2011, p. 121-126, available at: <http://www.hrw.org/sites/default/files/reports/wr2011.pdf>.

⁷⁹ Admin. Petition (Center) 9462-01-11 *XiaoXian v. Ministry of the Interior* (20 January 2011)

court criticised the decision to reject the asylum claim, based on the assertion that the asylum seeker was not speaking the truth.⁸⁰

Another example is the case of Z., a Nigerian national whose application for asylum was dismissed out of hand for not being credible. From the protocol of the hearing held by the Border Control Officer, conducted after Z. was arrested, we learn that he claimed that his wife and children had been murdered by Muslims, and that he fears that he will also be killed by a group of Muslims for being Christian. This is a claim, which, if found to be true, constitutes clear persecution for reasons of religion, as defined in the Refugee Convention. Nevertheless, his asylum application was dismissed out of hand because “it was fraught with many credibility problems”.⁸¹

The case of W., a Burmese national, which we described above, illustrates this point as well. As we described above, W’s application for asylum in Israel was rejected out of hand after a basic interview, because she failed to name of the director of the university where she had studied. Such was the decision, even though according to the language of the procedure itself, the matter should have been examined only at the full interview stage and not in the framework of the basic interview and the procedure for dismissal out of hand.

Decisions of the Immigration Detention Review Tribunal, as well as many letters of dismissal out of hand given to asylum seekers, show that the Questioning and Identification unit oversteps its authority as a matter of course, and rejects applications for asylum based on findings regarding credibility, which they are not authorised to determine to begin with.

5.5. Inadequate rejection letters and insufficient summary evaluations

In the chapter about the problems in the procedure for handling asylum seekers from 2011 we argued that providing asylum seekers with a letter of rejection that only includes a summary of the evaluation the RSD unit, infringes upon the right to argue a case and violates the right to challenge the decision. These violations of rights, as we shall see, are not merely a

⁸⁰ Admin. Petition (Center) 38490-01-11 *Karanja v. Ministry of the Interior* (20 January 2011)

⁸¹ Minutes of hearing dated 6 January 2011.

theoretic matter, but are expressed in practice in the way the RSD unit handles asylum claims.

Firstly, the rejection letters that the asylum seekers receive usually do not allow them to understand the full considerations for rejecting the application. Often, the only reason provided in the rejection letter is that the asylum seeker has not met the criteria set out in the Convention, without any explanation included about whether this conclusion was derived from findings about the applicant's credibility, whether because the grounds for persecution did not fall within one of the five elements recognised by the Convention, whether the conclusion was on the basis of information about the conditions in the country of origin, or whether there was another cause for rejection.

A typical example of such "reasons" can be found in the letter received by that S., an asylum from Senegal, which states the following:

"In order to be eligible for refugee protection under the *1951 Convention and the 1967 Protocol relating to the Status of Refugees* (the *1951 Convention and the 1967 Protocol*), you must establish that you are outside your country of origin and are unwilling to return there owing to a well-founded fear of persecution on account of the [sic] one of the Convention grounds.

Based on the above mentioned elements, your claim could not be established in regard with the 1951 Refugee Convention and the 1967 Protocol. Therefore, your refugee claim is rejected."

The letter states no more. This is a standard text which appears in many letters of rejection. It withholds information about the reasons for rejection, thus obstructing the ability of the asylum seeker to submit a request for reconsideration or for a legal petition, which would adequately address the reasons for dismissal.

Even when the rejection letters are somewhat more detailed and include the reasons for rejection, they are worded in a generalised fashion that does not enable applicants to address it. Many are rejected on the basis of "lack of credibility" as explained above. However, often the letters of rejection do not detail the reasons for not finding the applicant to be credible. Elaborating on these matters is crucial, since there may be "contradictions" that the asylum

seeker can easily explain, and sometimes, after the applicant is informed about which part of their statement was found unreliable, they may be able to present the Ministry of Interior with further evidence.

For example, in the letter of rejection addressed to A., an asylum seekers from Ethiopia, the only information about his lack of credibility was:

"[D]ue to credibility problems in your testimony it has been determined that crucial elements in your application were not established as true."

Even when rejection letters note that asylum claims were rejected on the basis of information regarding the country of origin, they do not state what information sources were used, and therefore the asylum seekers have no way of bringing additional information that will prove their claim and disprove the sources of information used by the Ministry of Interior. Such was the case of the letter received by G., an asylum seeker from Mauritania, which only included the following information about the situation in his country of origin:

"On the basis of a thorough review of the available and generally accepted information regarding your country, it has been determined that there is not a reasonable possibility that you will suffer a serious harm if you return there."

This type of reasoning leaves asylum seekers guessing about what situation exists in their country of origin, in the opinion of the Ministry of Interior, and on the basis of which sources the decision was made.

In addition, several errors that have been detected in the rejection letters lead to the suspicion that the Ministry is managing a "production line" of rejection letters with the aid of copying and pasting. For example, an asylum seeker from Cote D'Ivoire, who is represented by the Tel Aviv University Refugee Rights Legal Clinic, received a rejection letter which states that he is a national of the country "Ivory Mauritania", a country that does not exist. It appears to be some combination of Mauritania and Cote D'Ivoire (Ivory Coast).

This "production line" not only creates typos, which are not as significant, but also substantive errors. For example, P., an asylum seeker from Guinea, represented by the Migrants Rights Clinic at the Academic Center for Law and Business, received a rejection letter that was signed by the secretary of the Administrative Committee on Refugee. The

letter stated that the case had been passed on to the Advisory Committee, and in light of its recommendation, that the Director of the Population, Immigration and Borders Authority decided to reject the application. The letter also stated that the asylum seeker must leave the country within seven days. However, after the applicant's legal representative approached the unit, it became apparent the RSD unit's recommendation was never passed on to the Advisory Committee and a decision was never made to reject the application either by the Committee or the Director of the Authority.

This is not an isolated case. The District Court has commented on the fact that the secretary of the Advisory Committee on Refugees often reports in letters of rejection given to asylum seekers or to those whose application for "temporary protection" has been refused, decisions that had in fact not taken place by the authorised body at the Ministry of Interior, or states reasons for rejection that did not appear in the decision itself. Since the words of the court in this matter clarify best how deficient the practice of producing rejection letters at the Ministry of Interior is, it is worth to bring them in their entirety:

"After several warnings issued by the court regarding the lack of decision, Ms. Gezer, the secretary of the Advisory Committee at the Ministry of Interior, sent a letter dated 5 October 2010, which feigned to describe a decision by the Director of the Authority to reject the petitioner's application for refugee status.

However, this was not the case.

In a court hearing dated 7 October 2010 it became apparent that not only was such an application for asylum never made by the petitioner, but that the laconic decision of the Director of the Authority – in an application that had never been submitted (a decision presented to the court only after a recess in the hearing so that the matter could be looked into) – does not at all tally with Ms. Gezer's letter, which added many more reasons for rejection.

In the decision from that date I commented on this unacceptable practice (and I regret to say that this is not a singular case), and unequivocally instructed the Ministry of Interior to present a reasoned decision, to be taken by the person authorised to make decisions regarding nationality and the collective protection derived from it.

However, it transpires that court instructions are one thing, and the Ministry of Interior's practice is quite another.

On 27 January 2011 another letter by Ms. Gezer was produced, and once again she feigns to report on a decision by the Director of the Authority to reject the application for asylum, as well as on a complementary decision, that the petitioner did not prove to be a national of Eritrea and in any case holds an Ethiopian nationality, and is therefore not eligible for collective protection. Needless to say, the court was not presented with any decision in the latter – not by the Director of the Authority nor by any other authorised body at the Ministry of Interior.

...

It is inconceivable that once again we are provided with hearsay reports, and to be precise by reports given by Ms. Gezer, regarding decisions taken by authorised bodies, when these decisions are not presented to the court, in contravention of its instruction, and it is doubtful whether such decision were taken at all.”⁸²

The character of the “production line” of rejection letters signed by the secretary of the Advisory Committee on Refugee can also be discerned from the fact that during 2010 the secretary was on leave for several months, whilst at the same time hundreds of asylum seekers, whose application was denied, continued to receive letters signed by the secretary carrying dates when she was on leave. In a decision given by the Immigration Detention Review Tribunal in the case of G., a national of Chad, whose application had been rejected, the Tribunal notes:

“The applicant argues that the Ministry of Interior's conduct contained flaws which give rise to another justification for instructing his release. The Ministry of Interior's response has failed to address most of these flaws. The Tribunal lacks the authority to address some of these flaws. However, I would have expected a response to the claim

⁸² Admin. Petition (Center) 53854-07-10 *Tigset v. Ministry of the Interior* (1 May 2011), sections 15-16 of the ruling (The Ministry of the Interior has appealed the ruling and it is currently pending at the High Court – Admin. Appeal 4185/11).

regarding the signing of a letter by someone who at the time was on maternity leave.”⁸³

In addition, the letters of the secretary of the Advisory Committee on Refugees sometimes contain notifications in Hebrew and English that do not tally, and include significant and substantive differences. For example, an asylum seeker represented by the Tel Aviv University Refugee Rights Legal Clinic received notification from the secretary of the Advisory Committee on Refugees, where she was told, in English, of a decision to grant her a staying permit of type b/1 and recognize her as a refugee. In the language of the letter:

"I hereby inform you that your request for refugee status in Israel has been examined and the Minister of Interior has decided to grant you this status."

However, it soon transpired that her joy was premature, as the Hebrew version of the notification, which appeared on the very same page, did not include a notice regarding her recognition as a refugee. Her legal representative asked to receive the minutes of the deliberations at the Advisory Committee for Refugees, and upon studying these found that in fact the decision had been to reject her application for refugee status, and to grant her temporary status for other reasons.

Like the rejection letters, when the Ministry of Interior is requested to provide the asylum seekers, whose applications had been rejected, the opinion of the RSD unit, usually only a summary with the conclusion of the RSD unit is handed over without the reasons on which they are based. For example, a summary opinion in the case of R., an asylum seeker from Ethiopia, limited itself to referring to her credibility in the following manner:

“The description which the asylum seeker gave regarding the circumstances that led to her departure from her country of origin was not detailed and inconsistent. The asylum seeker answered the questions presented to her with evasion, and in a manner that contradicts her previous statements.”

⁸³ Decision of the Immigration Detention Review Tribunal, 29 May 2011.

While the full opinion of the RSD unit which had been presented to the Advisory Committee on Refugees and on the basis of which her asylum claim was rejected included a detailed account of the supposed contradiction that had been found in her testimony, the summary opinion given to her legal counsel did not clarify what these contradictions were, and therefore did not enable the applicant to respond to claims about contradictions or to provide further information that shows that there are in fact no contradictions, or that these can be reasonably explained.

5.6. Problems with translation

One of the most critical issues involving the asylum interviews is translation. Given that any inaccuracy or “contradiction” pertaining to the asylum seeker’s account may lead to the finding of “lack of credibility”, as we explained above, any mistake in translation may lead to the rejection of an asylum claim. The U.S. courts, for example, have recognised that minor “contradictions”, in matters that do not relate to the core of the asylum claim, and come up in the records of asylum interviews, may be attributed to flaws in translation, and have ruled that this happens as a matter of routine:

"We have long recognized that asylum hearings frequently generate mistranslations and miscommunications."⁸⁴

Research shows that translations of asylum interviews often create various problems, in a manner which is inherent to these types of interviews. In a research that reviewed 200 asylum interviews, it was established that translation errors often occurred as a result of overlap of meaning in the vocabulary, various nuances, exchanging active for reflexive verbs, errors in translating tenses and more.⁸⁵ One research, also based on the analysis of asylum interviews, pointed out the problem of the asylum seekers not being able to monitor the translation of their words, and to the fact that many interpreters only translate a “summary” of the asylum

⁸⁴ *Maini v. INS*, 212 F.3d 1167, 1176 (2000); *Bandari v. INS*, 277 F.3d 1160, 1166 (2000); *Gabuniya v. US Attorney General*, 463 F.3d 316 (2006); *Giday v. Gonzales*, 434 F.3d 543, 553 (2007); *Sarr v. Gonzales* 474 F.3d 783, 793-794 (2007).

⁸⁵ Trevor Trueman, *Reasons for refusal: an audit of 200 refusals of Ethiopian asylum-seekers in England*, 23(3) J. IMMIG. ASYLUM & NAT'LITY L.281(2009), p. 294.

seeker's reply and omit words that they think are not vital, something that may lead to the loss of some of the information provided by the asylum seeker.⁸⁶

And yet the Ministry of Interior refuses to accept this as a factor that needs to be considered when analysing minutes of interviews conducted with asylum seekers.

The Ministry of Interior does not employ its own interpreters, and instead uses the services of an external contractor. The interpreters do not undergo any training specific to interpreting interviews in general and asylum interviews in particular. In fact, in most cases the only qualification the interpreter has is being a native speaker of the language spoken by the asylum seeker. Some of the interpreters have only a mediocre command of Hebrew and it is apparent in the interviews that the vocabulary they use when translating applicants' words is limited. Often, interpreters who speak a different dialect to the one spoken by asylum seekers are used. However, as noted before, even if only trained and qualified interpreters were used, and even if they spoke both the language of the interviewer and the interviewee perfectly, any translation will always be prone to some errors. Therefore, the Ministry of Interior should take this into consideration when it focuses on minor contradictions arising from the record of the interview.

It is fair to assume that most translation errors are not uncovered: the asylum seeker and the interviewer, who each speak only one of the languages used by the interpreter, cannot tell when a question or a reply is translated to another language partially, wrongly or inconsistently. However, a number of cases where such translation errors have been uncovered by chance, point to this phenomenon taking place.

For example, in a proceeding where the Hotline for Migrant Workers represented an asylum seeker from Ethiopia, two interviews were held. In the first interview the applicant's reply to the question of when he had been arrested was recorded as "Gombot-October". In the second interview the reply was recorded as "Gombot-May". Although in both cases the asylum seeker replied with the same answer, "Gombot", the records testify to at least one erroneous translation. This is a rare case, where in both cases the reply in the language it was spoken

⁸⁶ Sonja Pöllabauer, *Interpreting in asylum hearings: Issues of role, responsibility and power*, INTERPRETING 6:2 (2004) 143.

was recorded alongside the translation, which enabled the asylum seekers' attorney to uncover the mistake. However, in most cases only the word as it was translated into Hebrew is recorded, and there is no way to uncover such mistakes. In this case, despite the fact that the records clearly demonstrate that the asylum seeker provided the same reply in both interviews, the Ministry of Interior insisted on claiming in court, that the petitioner provided two differing answers to the question of when he had been arrested.

In another case where the Tel Aviv University Refugee Rights Legal Clinic represented an asylum seeker from Chad, the interview was conducted with a French-Hebrew interpreter. When asked where his father had been a political activist the asylum seeker replied "sud Chad", meaning south of Chad. However, the interpreter translated the words to "northern Chad". In addition, when the asylum seeker said that a friend had found a driver for him, the interpreter replied that his friend was the driver. The asylum seeker's legal representative was present, and since he speaks some French, brought these errors to the attention of the translator and the interviewer, and the interpreter admitted his errors. However, in most cases the asylum seekers' legal representative, even when present in the interview, does not speak the language of the asylum seeker and cannot notice such errors. In fact most asylum seekers are not represented in these proceedings at all.

In an interview of another asylum seeker, who speaks Amharic and some Hebrew, and who was also represented by the Tel Aviv University Refugee Rights Legal Clinic, the asylum seeker stated that after his release from detention he was required to appear before the police every day, and the interpreter translated that he was required to appear every week. In that same interview, the asylum seeker said that he was an activist in an organisation named ONEG, and the interpreter translated that he was active in an organisation named Oleg. Additionally, when the asylum seeker said in Amharic that he had given his asylum seeker documentation to the UNHCR office in Cairo, the interpreter translated that "even the UNHCR are aware of this". Because in this case the asylum seeker understood basic Hebrew, he was able to correct the interpreter in all three instances, and she admitted to making the errors. However, most asylum seekers do not speak Hebrew and are therefore unable to correct mistakes made by interpreters.

The Ministry of Interior has adopted a practice of having asylum seekers sign a document where the applicant confirms that he has understood all the questions and that the

documentation of the interview is precise. However, given that the records are produced in Hebrew, signing such a confirmation is meaningless.

A possible solution to this problem is to digitally record the asylum interviews and to allow the asylum seekers and their legal representative to listen to the recording of the interview and comment on translations errors. Despite the fact that digitally recording the interview may prevent the type of disagreements we have described, until recently the Ministry of Interior has refused to consider such a possibility. Recently, in legal proceedings conducted by the Hotline for Migrant Workers, the District Court ruled that an asylum seeker has the right to digitally record her own interviews, so long as the Ministry of Interior itself refrains from doing so, and even recommended that the Ministry itself digitally record asylum interviews.⁸⁷ The Ministry of Interior did not give in and submitted an application for permission to appeal to the High Court. However the High Court requested that the Ministry of Interior clarify whether it would be willing, as a matter of standard procedure, to digitally record all interviews of asylum seekers who request this in advance.⁸⁸ In response, the Ministry of Interior agreed to digitally record the interview of the petitioner, and informed the court that it would consider amending the procedure so that all asylum interviews are recorded.⁸⁹ Consequently, the State's request for submitting an appeal was dismissed.⁹⁰

6. Consequences of a flawed system reflected in refugee recognition rates in Israel

Data presented by the Ministry of Interior to the District Court and supported by an affidavit from the "Head of Research and Information Branch" at the RSD unit, show that in 2009 the Advisory Committee for Refugees deliberated 812 asylum applications and recognised only two asylum seekers as refugees (a recognition rate of 0.24%); and in 2010 the Advisory

⁸⁷ Admin. Petition (center) 5462-05-11 *Shwe v. Ministry of the Interior* (25 October 2011)

⁸⁸ Request for Administrative Appeal 8303/11 *State of Israel v. Shwe* (10 November 2011)

⁸⁹ Request for Administrative Appeal 8303/11, State's submission (16 November 2011).

⁹⁰ Request for Administrative Appeal 8303/11 (21 November 2011).

Committee on Refugees deliberated 3,366 asylum applications, and recognised only six asylum seekers as refugees (a recognitions rate of 0.17%).⁹¹

This data does not reveal the full picture. Significantly, of the few applications that have been approved, all except one were accepted following positive recommendations by UNHCR in old cases which the UNHCR had begun to review in 2009 and continued to handle also after the transfer of authority to the Ministry of Interior. To date, of the thousands of application reviewed by the RSD unit at the Ministry of Interior, only a single applicant has been fortunate enough to be recognised as a refugee following a positive recommendation by the unit.

Whenever the Ministry of Interior is confronted with complaints about the minuscule rate of asylum applications that it approves, it commonly retorts that it applies the same standards that had been used by UNHCR during the period that it was responsible for reviewing asylum applications. However, in a reply to a Freedom of Information request submitted by the Tel Aviv University Refugee Rights Legal Clinic, the Ministry of Interior provided data that testifies to the fact that it applies very different standards indeed. The Ministry's data show that since 2009, when authority for reviewing applications was transferred from UNHCR to the Ministry of Interior, and until the end of May 2011, UNHCR presented the Advisory Committee on Refugees with 61 recommendations to recognise asylum seekers as refugees, in old cases where the review began in previous years. Of these, only eight were recognised by the Advisory Committee as refugees, and eleven received "another status". The Ministry of Interior did not elaborate exactly what this "other status" is, however in effect it means that their applications for asylum were also rejected.⁹²

The recognition rate in Israel is extremely low in comparison with western countries, who deal with large numbers of asylum seekers and other migrants. In 2010, 41.3% of decisions concerning asylum applications in Australia, were positive decisions recognizing persons as refugees according to the Convention relating to the Status of Refugees (3,859 of 9,340); in Austria the recognition rate for 2010 was 14.5% (2,977 of 20,528); in Belgium – 12.8%

⁹¹ Admin. Petition (Center) 24177-01-11, State's Submission (5 May 2001), section 8.

⁹² Letter from Mrs. Eleanor Gezer, the Secretary of the Advisory Committee on Refugees, to Attorney Yuval Livnat, dated 12 July 2001.

(2,882 of 22,413); in Canada – 37.9% (12,305 of 32,457); in France – 18.7% (12,552 of 66,967); in Germany – 15.9% (7,704 of 48,187); in Italy – 16% (1,617 of 10,096); in Norway – 11.8% (3,213 of 27,102); in South Africa – 13.1% (10,083 of 77,071); in Sweden – 5.1% (2,304 of 44,729); in Switzerland – 15.9% (3,449 of 21,598); In the United Kingdom – 19.4% (9,281 of 47,832); and in the U.S. – 27.1% (19,043 of 70,024).⁹³ It should be stressed that this data refers to the recognition rate of asylum seekers as Convention refugees, and do not include additional persons who were granted complementary protection.

In Israeli case law, a general presumption has been developed, whereby statistical data that are incompatible with real life experience may lead to a presumption of inappropriate discretion of administrative authorities and intent to fail.⁹⁴ This presumption is not unique to Israeli case law, and in fact has been recently implemented by the European Court of Human Rights, which examined the Greek asylum system, and declared that it does not meet the minimal standards set out by international law. Amongst other things, the European Court concluded that the extremely low recognition rate in Greece, one percent, is so unreasonable, that it leads to a suspicion of the fairness of the refugee system in Greece.⁹⁵ As we noted above, in Israel the recognition rate is significantly lower than one percent.

Summary and Conclusions

The picture emerging from the analysis of the new asylum system established in Israel is bleak. A system that was set up against a background of declarations by political leaders and high ranking officials to the effect that all asylum seekers are labour migrants, and in an atmosphere of incitement against asylum seekers and disinformation about the reasons why most are not deported, cannot be a fair system. It would seem that a system that was established not with the declared goal of providing protection to refugees, but rather with the intent of enabling the deportation of as many people as possible as quickly as possible, is a system that is bound to be unfair and degrading.

⁹³ UNHCR Global Trends 2010, Statistical Annex, Table 9 (11 June, 2011), available at: <http://www.unhcr.org/4ef9c7269.html>.

⁹⁴ See, for example: HCJ 571/89 *Moskowitz v Council of Surveyors*, *Piskei Din* 44(2) 236, 256

⁹⁵ *M.S.S. v. Belgium and Greece*, Application no. 30696/09, p. 105 (21 January, 2011).

The various practices of the Questioning and Identification Unit and the RSD Unit described in this report, are a clear testimony of the failure of the new system created in Israel. Despite the positive potential inherent to the transfer of authority from UNHCR and the training of Ministry of Interior employees by professional elements, once the heads of the system declared, before even a single application had been reviewed, that all asylum seekers are in fact economic migrants, the clerical ranks were left with little option but to toe the line and to reject all asylum claims. One positive recommendation over the course of two and a half years and after the review of thousands of applications is tantamount to one hundred percent rejection of asylum applications. When comparing this data with data in other countries, we cannot but reach the conclusion that something has gone terribly wrong with the Israeli asylum system, and that it is not qualified to identify those people who face the threat of persecution in their countries of origin.

One of the possible ways to ensure that the failure of the system of the Ministry of Interior does not continue to put refugees' lives at risk is to promote the resettlement of refugees in other countries. It is important to note that over the past couple of years several Western countries have agreed, in a few cases, to accept a small number of asylum seekers after their applications for asylum had been rejected in Israel, in order to prevent risking their lives. In these cases, despite the fact that the Israeli asylum mechanisms determined that they were not refugees, an independent examination of these cases by other countries led to the conclusion that the Ministry of Interior's decision was wrong, and therefore they should be resettled.

However, the solution of resettlement can only remedy the consequences of the serious flaws in the Israeli asylum seekers is a few cases. Other countries do not allow the resettlement of refugees in their territory in large numbers, amongst other reasons, because they too are currently facing a large number of asylum seekers arriving at their shores, and also because they are not eager to exempt other countries, such as Israel, from their responsibilities under international law towards those present in their territory.

It appears that the solutions to the distortions within the asylum system can be found in a thorough correction of the fundamental perceptions at the basis of this system and a comprehensive reform of the practices derived from these perceptions, whilst undertaking to retrain the employees of the RSD unit and the Questioning and identification unit. Retraining and a change in perceptions concerning interview techniques, the methods for evaluating

credibility of asylum seekers, and research about countries of origin, is a necessary for the reestablishment of a fair asylum system. So is the fundamental change in norms that infringe upon the right to a fair process, such as those relating to disclosure of information and documents relevant to asylum seekers, using interpreters lacking training specific to translating asylum interview, and reliable documentation of asylum interviews. Without these, Israel's asylum system will continue to send people back to their death.

State's response to the report



יחידת הטיפול במבקשי מקלט
Refugee Status Determination Unit

13 December 2011

The Refugee Status Department

The State of Israel is a signatory to the International Refugee Convention and invests huge resources for dealing with asylum seekers entering its gates.

The authority and responsibility for determining refugee status for an asylum seeker who is present on the territory of the Israeli state lies with the Minister of the Interior.

In 2002 the Legal Advisor to the Government established an inter-ministerial committee for the purpose of determining eligibility for political asylum seekers in Israel. The role of the inter-ministerial committee is to examine each application in detail and make a recommendation to the Minister of the Interior.

Up until 01 July 2009 an application of an asylum seeker was made to the United National High Commission for Refugees. As of 01 July 2009 the handling of asylum seekers has been transferred to the RSD (Refugee Status Department) of the Ministry of the Interior. The RSD unit was established in close cooperation with the UNHCR, and under its strict guidance.

Representatives of the RSD were trained by international experts on handling asylum seekers. Each application is meticulously examined by virtue of the principles determined in the Refugee Convention, and at the same time with the necessary sensitivity and delicacy.

Each asylum seeker undergoes a comprehensive interview in order to



יחידת הטיפול במבקשי מקלט
Refugee Status Determination Unit

examine whether the case being claimed falls under the definition of the Refugee Convention. The recommendations are passed on to the Inter-Ministerial Committee Advising the Interior Minister.

A recommendation of a representative of the RSD is only transferred after a meticulous examination of all the grounds set out in the Refugee Convention. Among others: the situation in the applicant's county of origin; persecution for reasons of religion or nationality and examination of the truthfulness and relevance of claims for political asylum.

The unit possesses the tools to ensure reliable and updated information that allows a sincere and impartial examination of every asylum application in Israel.

Following is our response to the main issues:

As for section 4.1 relating to the time constraint of one year for submitting asylum applications, we would like to point out that this section of the procedure is not implemented retroactively and presently application are not dismissed out of hand for this reason alone, but instead each application that is submitted is examined in a preliminary examination.

As for section 4.2 regarding dismissal out of hand, most of the employees of the Questioning and Identification unit underwent RSD training. In addition, we would like to stress that there is no limitation on the duration of the interview and the duration of the interview is dependent on the application and its circumstances. Every asylum seeker is given the opportunity to make any claim for asylum. The person determining the application is the Head of the Team, who underwent RSD training, and if a decision for dismissal out of



יחידת הטיפול במבקשי מקלט
Refugee Status Determination Unit

hand has been taken, it is possible to file a petition against the decision.

As for section 4.7, the procedure for handling asylum seekers is intended to provide a solution to claims for status in Israel by virtue of the refugee convention, i.e., in a case where a person claims persecution on the basis of one of the grounds set out in the convention, and as such, there is no place in the framework of this procedure to examine applications based on other grounds.

The employees of the RSD unit, who, as we have stated, underwent extensive training, including about how to conduct an interview, treat every seeker with the appropriate sensitivity, and are responsible for examining the applications thoroughly. During the interviews the presence of the legal representative of the applicants is permitted, and in addition, representatives of the UNHCR are also allowed to enter, which testifies to the full transparency of the process.

As for section 5.2, the assessment of applications for political asylum is conducted on the basis of weighing all the circumstances. In attempting to gain an in-depth understanding of the asylum seeker's story, the interviewer must also address supposedly marginal circumstances in his/her case. It is legitimate to ask questions that are not central to the claim in order to, as far as possible, genuinely and accurately evaluate the claims at the basis of the application.

As for section 5.3, in the framework of the examination of the application, every interviewer in the RSD unit is required to conduct research pertaining to the claims made during the interview that they conducted. The Head of



יחידת הטיפול במבקשי מקלט
Refugee Status Determination Unit

Research and Information Branch (whose title – Head of Branch - merely signifies a rank and nothing else, in accordance with the civil service ranking system), is responsible for assisting in this area. Notably, in the matter of improving the methods of research, training is provided to interviewers from time to time. (Just recently such training was conducted and organized by the UNHCR).

As for section 5.6 regarding problem with translations, interpreters from a company that has won a government tender are present in interviews. This translation company also provides translation services to the courts.

To conclude, we would like to note that the employees of the RSD unit and those of the Questioning and Identification unit are employees that have been trained and are being trained by the UNHCR, amongst others. These employees are experienced and act with professionalism and the necessary sensitivity for handling such cases, and all in accordance with international standards.

stiftung
PRO ASYL

Published with the generous support of the PRO ASYL Foundation