

Hotline for Refugees and Migrants



FALLING ON DEAF EARS

Asylum Proceedings in Israel

October 2018

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About the Hotline for Refugees and Migrants

The Hotline for Refugees and Migrants is a nonpartisan nonprofit organization that aims to protect and promote the human rights of refugees and migrants and to prevent human trafficking in Israel through client services, detention monitoring, legal action and public policy initiatives.

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1. Introduction

This report is, to some extent, a follow-up to a report published in 2012 by the Hotline for Refugees and Migrants (HRM, at that time known as The Hotline for Migrant Workers).¹ The 2012 report examined Israel's emerging asylum system shortly after the State of Israel stopped relying on the UN High Commissioner for Refugees (UNHCR) to examine whether asylum seekers meet the criteria set forth in the Convention Relating to the Status of Refugees. The 2012 report documented numerous failings in the operation of the Israeli asylum system and discussed the infinitesimal percentage of recognized refugees in Israel compared to their recognition rates in other countries.

In the conclusion to the 2012 report, we determined that the severe problems characterizing Israel's asylum system are, to a large extent, a result of the most basic perceptions at the heart of the system, a fundamental belief permeating Israel's asylum system that all asylum seekers are "work infiltrators" or "migrant workers" who seek to exploit the asylum system. Therefore, the role of the asylum system is not to identify refugees so as to guarantee their rights, but to identify those who are not refugees so as to ensure their speedy deportation. Thus, we believed that addressing the failings of the asylum system would necessitate a complete overhaul and a fundamental change in the basic beliefs and common practices of the system.

Such an overhaul has not occurred in the years since publication of that report.

¹ HRM, *Until Our Hearts Are Completely Hardened: Asylum Procedures in Israel*, March 2012 (hereafter: *Until Our Hearts are Completely Hardened* or *the 2012 report*) <https://hotline.org.il/en/publication/until-our-hearts-are-completely-hardened-asylum-procedures-in-israel/>

2. Refugees and Asylum Seekers

Before delving into an examination of Israel's asylum system, we will briefly present the background required to understand the purposes of establishing an asylum system.

A refugee, according to the 1951 Convention Relating to the Status of Refugees (signed and ratified by Israel) is a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."²

We will not examine the complexities of this definition and the multiple distinctions resulting from it in this report. But briefly, we shall point out that this definition is forward-looking, and the examination that it requires is the question of whether a person whose asylum request is pending may be exposed to the risk of death, deprivation of liberty or a significant violation of basic human rights emanating from one of the grounds for persecution listed within this definition (race, religion, nationality, membership in a particular social group or political opinion). At the time of its framing, the Convention limited the definition of a refugee to a person who has a well-founded fear of being persecuted due to events preceding 1951, and allowed the countries joining the convention to choose to apply it only to those who have a well-founded fear of persecution due to events that occurred in Europe. However, the 1967 Protocol Relating to the Status of Refugees, which Israel joined, abrogated these restrictions.³

² Convention Relating to the Status of Refugees (1951), Article 1A(2). <http://www.unhcr.org/3b66c2aa10>

³ Protocol Relating to the Status of Refugees, 1967. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolStatusOfRefugees.aspx>

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The convention grants refugees a number of rights, the most important of which is the right not to be deported to a country where they have a fear of being persecuted. The rule prohibiting such a deportation is known as the *non-refoulement* principle, enshrined in Article 33 of the Refugee Convention. In addition, based on customary international law, the non-refoulement principle applies to individuals who do not meet the definition of a "refugee" but whose life or liberty is at risk if deported.⁴ This principle also applies, under certain circumstances, to those who do not meet the definition of the Refugee Convention, based on the 1966 International Covenant on Civil and Political Rights,⁵ and the 1984 Convention Against Torture.⁶ The protection offered to those who do not meet the criteria of the Refugee Convention, but are protected from deportation under this principle, is called "complementary protection."

Although Israel has not adopted the clauses of the Refugee Convention in domestic legislation, there is an understanding that Israeli authorities should follow the provisions of the convention.⁷ This is expressed in a series of Supreme Court rulings maintaining that the State of Israel recognizes its commitment to act in accordance with the Refugee Convention, and in the Ministry of Interior Refugee Status Determination (RSD) Procedure concerning the examination of asylum applications.⁸ The obligation to follow the Refugee Convention is also grounded in the 'assumption of conformity', in which light Israeli law must be interpreted, and administrative authorities must apply it, in accordance with Israel's international obligations, unless legislation exists that explicitly

⁴ Administrative Appeal 9656/08 *the State of Israel vs. Saidi* (December 15, 2011). See also Elihu Lauterpacht & Daniel Bethlehem, *The scope and content of the principle of non-refoulement*, in *Refugee Protection in International Law* 109 (Feller, Türk & Nicholson eds., 2003).

⁵ International Covenant on Civil and Political Rights, 1966.
<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984. <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

⁷ HCJ 7164/12 *Adam vs. the Knesset*, article 7 of Justice Arbel's ruling (September 16, 2013).

⁸ *Procedure for Handling Political Asylum Seekers in Israel* (hereafter: RSD Procedure), no. 5.2.0012.

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contravenes these obligations.⁹

The object of the asylum system is to examine the applications of those claiming to be refugees ("asylum seekers") and determine whether they meet the criteria set forth in the Refugee Convention and are thus eligible to receive political asylum in Israel. This recognition entails the rights not to be deported to their country of origin, remain within Israel's borders and receive a temporary residency status.¹⁰

⁹ Criminal Appeal 131/67 *Kamir vs. the State of Israel* (1968); HCJ 4542/02 *Kav LaOved NGO vs. the Government of Israel* (2006).

¹⁰ RSD Procedure, footnote 7, articles 7, 11-12.

3. Asylum Proceedings in Israel

The various transformations of Israel's asylum system were described in the 2012 HRM report. We will therefore address these only briefly here.

Until 2001, the UNHCR was exclusively in charge of examining asylum applications in Israel. A small representative office of the UNHCR in Israel interviewed the asylum seekers, and the UNHCR's headquarters in Geneva made a determination on the cases. These determinations were passed on to the Israeli Minister of Interior who would decide whether to adopt them. In 2001, a hybrid asylum system began operating in Israel in which determinations on asylum cases were made in a process involving both the UNHCR and the Israeli Ministry of Interior.

This hybrid system operated according to a 2001 procedure that was never published. According to this procedure, the UNHCR handled the asylum application process: receiving applications, registering the applicants, conducting interviews, examining the conditions in their countries of origin, and then passing its recommendations to the Inter-Ministerial Committee. This committee, which included representatives of a few Israeli government ministries, decided whether to adopt the recommendations of the UNHCR, the final decision being in the hands of the Minister of Interior (or the executive director of the Population, Immigration and Borders Authority (PIBA), in cases where the recommendation was to reject the application in a summary procedure).¹¹

In 2008, a gradual process of transferring the examination of asylum applications from the UNHCR to the Israeli Ministry of Interior began. During the initial phase, the Ministry of Interior began to register and receive the applications of asylum seekers. Following this, in July 2009, the responsibility for all the stages of the asylum process were transferred to the Refugee Status Determination Unit (RSD Unit) at the Ministry of Interior.

¹¹ For more on the structure of Israeli asylum system at the time, see: *Until Our Hearts are Completely Hardened*, footnote 1, p. 12-15.

The RSD Unit operated without any written regulations until January 2011, when the Procedure for Handling Political Asylum Seekers in Israel (RSD Procedure) was issued and came into effect.¹² Since its issuance, the RSD Procedure has been updated several times.¹³

In accordance with the procedure, asylum applications are filed at specific PIBA offices. In reality, the only offices that accept asylum applications are located in southern Tel Aviv, at the office of the RSD Unit, and in detention facilities in which asylum seekers are held; it is impossible to file asylum applications at the Ben Gurion Airport or other border crossings. Upon applying for asylum, the applicants undergo a process of registration and identification. At this stage the RSD Procedure also states that "Should a suspicion arise, at the conclusion of the registration and identification process, that the foreign subject is not who he claims he is or is not a subject of the country which he stated was his country of citizenship," the Unit may reject the application out of hand. A person whose asylum application is not rejected out of hand undergoes a basic interview, at the end of which the interviewer decides whether to forward the asylum application for further processing and a comprehensive interview, or to reject it out of hand in 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." If asylum seekers' applications are rejected at this stage, they cannot file a request to reconsider the case, and the only option to potentially reverse the decision is through legal proceedings.¹⁴

An asylum-seeker who passes the initial RSD interview then undergoes a comprehensive interview. At the end of the interview, if it is found that "the

¹² RSD Procedure, footnote 7.

¹³ The current wording of the RSD Procedure (7th iteration) came into force on January 18, 2018. As of the writing of this report, the current version can be found here (Hebrew): <https://tinyurl.com/yb3764gs>

¹⁴ According to article 4A(2) of the RSD Procedure, asylum-seekers whose application is rejected out of hand are to be notified that they may file an appeal with the Administrative Court, but in reality, the authority to adjudicate the matter is now in the hands of the Appeals Tribunal, which operates under the 1952 Entry to Israel Law.

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 case will be determined in a summary procedure by the chairman of the Advisory Committee on Refugees, whose decision is supposed to be approved by the director of PIBA.

Asylum applications that are not rejected under the summary procedure are transferred to a hearing at the Advisory Committee on Refugees. This is a committee headed by a former judge or a person who is not a state employee and meets the criteria for serving as a judge in a district court. Its members are representatives from the Ministry of Foreign Affairs, Ministry of Justice and PIBA (operating under the Ministry of Interior). The committee is presented with the recommendation of the RSD Unit, and based on this recommendation, the Advisory Committee formulates its own recommendation on whether to recognize the asylum-seeker as a refugee. This recommendation by the Committee requires the final approval of the Minister of Interior.

Asylum seekers whose application is rejected in the summary procedure or by the plenum of the Advisory Committee can, within two weeks of being notified of the rejection, file a request to reexamine the case "if there has been a change in the circumstances pertaining to the matter, including the coming into light of new documents and findings."

In general, asylum seekers outside of detention facilities are provided with a permit under article 2(A)(5) of the Entry to Israel Law until they receive a decision on their application for asylum.¹⁵ This permit does not grant the right to work, or any other rights; however Israeli authorities have decided not to enforce the prohibition on employing asylum seekers holding this permit while they await a decision on their application.¹⁶ It should be mentioned that according to the latest amendments to the RSD Procedure, asylum seekers who file an asylum

¹⁵ "A temporary visit permit to those who are present in Israel without a residency permit and a removal order was issued against them - until they exit from Israel or until their removal from the country."

¹⁶ H CJ 6312/10 *Kav LaOved vs. the Government*. Ruling issued on January 16, 2011.

application while holding a valid tourist visa do not receive permits under Article 2(A)(5) and the prohibition on their employment is enforced. This amendment was added to the Procedure due to the significant increase in the number of asylum seekers from the Ukraine and Georgia who filed asylum applications after entering Israel on tourist visas.

Asylum seekers who are recognized as refugees will receive, in accordance with the RSD Procedure, an A/5 residency permit (a temporary residency status), which grants them the right to work, as well as rights under the National Security Law and the National Health Insurance Law. The status is granted for one year, and is extended as long as no significant changes occur in the circumstances of the refugee. A recognized refugee may also request a permit for his/her spouse and children.¹⁷

¹⁷ RSD Procedure, footnote 7, articles 11-12.

4. Statistics

Before we discuss additional aspects of Israel's asylum system, let us examine the numerical outcomes of the workings of this system. Numbers alone, when compared to the recognition rates in developed ("Western") countries, indicate that Israel's asylum system has gone awry.

In 2017, in the course of legal proceedings in the Supreme Court, the Ministry of Interior detailed the number of asylum seekers who had filed asylum applications in Israel since 2012,¹⁸ and later in July 2018, provided an update to this data up to the end of May 2018.¹⁹ This is the data provided by the Ministry of Interior:

	2012	2013	2014	2015	2016	2017	2018 (*)
Georgia	7	1	27	736	3,668	7,731	988 (2,371)
Ukraine	7	4	51	703	6,880	1,352	372 (893)
Eritrea	124	1,070	1,204	3,586	1,991	1,748	5,261 (12,626)
Sudan	56	2,228	902	1,162	636	907	663 (1,591)
Other Countries	1,119	574	492	1,084	1,662	3,062	2,690 (6,456)
Total	1,313	3,877	2,676	7,271	14,837	14,782	9,974 (23,938)

* Annual calculation based on the monthly average. It should be mentioned, that as part of the trend of an increase in the number of asylum applications 2016 and onward, the number of asylum applicants in 2018 grew even further, as the State issued the Regulation on Removal to Third Countries, and PIBA prepared for a significant increase in the number of related applications, as can be seen in the data. [This text appears in the table provided by PIBA and is presented as-is.]

¹⁸ HCJ 2293/17 *Garsegeber vs. the Knesset*, notice by the respondents 2-4, para 2 (Nov 12, 2017).

¹⁹ Letter from the Head of PIBA's Enforcement Administration to Adv. Elad Kahana (July 15, 2018).

In our 2012 report we laid out the infinitesimal recognition rates of refugees by Israel's asylum system. We mentioned that in 2009, the State of Israel recognized only two refugees out of 812 decisions made on asylum applications (0.24%); in 2010 Israel recognized six people as refugees out of 3,366 asylum decisions made (0.17%).

Since then, no real change has occurred.

Based on data published by the State Comptroller's Office, Israel recognized 44 refugees out of 6,658 decisions made between the years 2011 and 2017.²⁰ In total, since 2009 when the handling of asylum applications was fully transferred to the Ministry of Interior, a total of 52 refugees were recognized out of a total of 10,836 decisions made, i.e. a total recognition rate of 0.48%.

Year	Number of decisions	Number of recognized refugees	Recognition rate of refugees
2009	812	2	0.24%
2010	3,366	6	0.17%
2011	352	8	2.27%
2012	956	6	0.63%
2013	1,255	10	0.8%
2014	1,062	13	1.22%
2015	1,330	2	0.15%
2016	967	4	0.41%
2017	736	1	0.13%
Total	10,836	52	0.48%

To illustrate the meaning of the data, we can compare Israel's recognition rate of refugees to that of other countries. The data provided below appeared in the statistical yearbook published by the UNHCR on the international recognition rates of refugees. The latest data was published in February 2018, and refers to the year 2016. The data includes the number of asylum seekers recognized as refugees and the number of people granted "complementary protection."²¹

²⁰ State Comptroller's Annual report 68C, p. 1437.

²¹ UNHCR, Statistical Yearbook 2016, 16th edition (February 2018), Table 9.

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Since we cannot, in this report, present all the countries included in the statistical yearbook of the UNHCR, we will present the data on OECD countries, an organization to which Israel belongs.

Country	Total number of decisions	Recognized refugees (#)	Recognized refugees (%)	Comp. protection* (#)	Comp. protection (%)
Australia	19,998	6,567	32.84%	—	—
Austria	41,178	22,307	54.17%	3,699	8.98%
Belgium	30,808	12,494	40.55%	3,307	10.73%
Canada	16,449	10,226	62.17%	—	—
Chile	140	34	24.28%	—	—
Czech Rep.	1,410	148	10.5%	302	21.42%
Denmark	11,308	4,478	39.6%	2,881	25.48%
Estonia	208	80	38.46%	63	30.29%
Finland	28,208	4,586	17.21%	1,789	6.34%
France	131,846	24,007	18.21%	12,617	9.57%
Germany	766,429	263,622	34.4%	179,588	23.43%
Greece	43,941	3,236	7.36%	5,303	12.07%
Hungary	54,579	154	0.28%	271	0.5%
Iceland	944	51	5.4%	39	4.13%
Ireland	5,306	788	14.8%	—	—
Italy	89,873	4,798	5.34%	30,606	33.72%
Japan	11,226	28	0.25%	97	0.86%
S. Korea	6,577	57	0.87%	248	3.77%
Latvia	375	46	12.27%	89	23.73%
Lithuania	354	181	51.13%	14	3.95%
Luxembourg	2,244	774	34.49%	29	1.29%
Mexico	7,484	3,282	43.85%	—	—
Netherlands	36,800	19,597	53.25%	—	—
New Zealand	535	166	31.03%	—	—
Norway	29,072	11,688	40.2%	459	1.58%
Poland	13,010	112	0.86%	165	1.27%

Country	Total number of decisions	Recognized refugees (#)	Recognized refugees (%)	Comp. protection* (#)	Comp. protection (%)
Portugal	1,156	104	9%	267	23.1%
Slovakia	281	167	59.43%	12	42.7%
Spain	9,267	369	3.98%	6,500	70.14%
Switzerland	31,299	5,985	19.12%	6,850	21.89%
Turkey	46,116	18,423	39.95%	—	—
UK	46,782	13,554	28.97%	1,534	3.28%
US	87,948	20,437	23.24%	—	—

* The number of people receiving complementary protection is counted separately from the people recognized as refugees.

It is easy to see that in general, the recognition rates of refugees in almost all OECD countries are larger, by thousands of percent, than Israel's recognition rate. Israel's recognition rate is similar to those of countries whose asylum systems are considered flawed, such as Hungary, Poland and Japan.

In some cases, when confronted with the low recognition rates of refugees in Israel, Israeli officials respond by stating that the recognition rates do not include citizens of Eritrea and Sudan who are not deported. Therefore, they argue, the number of Eritreans and Sudanese in Israel should be compared to the data on complementary protection granted in other countries. This is a deeply flawed comparison.

The State of Israel does not treat citizens of Eritrea and Sudan as other countries treat those eligible for complementary protection. The countries of the European Union, for example, are obligated to grant those enjoying complementary protection most of the rights provided to those recognized as refugees under the Refugee Convention. This status grants them, among other things, the right to confer legal status on their relatives, the rights to work, education, social support and freedom of movement.²²

²² Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

In Israel, on the other hand, the Ministry of Interior has clarified, in several legal proceedings, that according to its interpretation, the status of citizens of these two countries is not similar to those entitled to complementary protection, but is merely a status granted to those who are protected by a "temporary non-removal policy".²³ As we will show below, citizens of Sudan and Eritrea do not receive work permits in Israel and live under the problematic arrangement of "non enforcement" of the prohibition to employ them. The Ministry of Interior tried to promote multiple plans to indefinitely detain and deport them to third countries, efforts that failed because the third countries eventually refused to accept the deportees. The State has also adopted measures to punish these asylum seekers financially, including imposing a tax on their employment and deducting a "deposit" from their wages to ensure their departure from Israel. Israeli officials treat the citizens of Eritrea and Sudan as an unwanted population, labeling them "infiltrators" and proclaiming that their departure from Israel should be encouraged. It is therefore clear that one cannot compare Israel's treatment of citizens of Eritrea and Sudan with the treatment of those enjoying complementary protection in other countries, even if one assumes that citizens of Eritrea and Sudan should have received complementary protection in Israel instead of refugee status.

The sharp disparities in the recognition rates of refugees and those recognized as entitled to complementary protection in countries labeled as "developed" and the recognition rates in Israel, which perceives itself as a developed country, attests, among other things, to the deep flaws characterizing Israel's asylum system. It is possible that some disparities will exist in recognition rates across countries, partially due to the different populations and nationalities of asylum seekers reaching those countries, and due to particularities of the bureaucracies handling the asylum requests in each country. However, such extreme disparities cannot be explained this way.

The Israeli Supreme Court has ruled that statistics which do not reflect the realities of life may serve as a basis for finding that administrative authorities

²³ Administrative Appeal 8908/11 *Asfo vs. the Ministry of Interior* (July 17, 2012).

employed improper discretion.²⁴ In 2011, the European Court of Human Rights noted that the recognition rate of refugees in Greece, which stood at one percent, was so unreasonable that it raises serious questions regarding the fairness of the asylum system in Greece.²⁵ Since then, as indicated in the table above, the recognition rate of refugees in Greece has grown significantly. In Israel, on the other hand, the refugee recognition rate remains minuscule. When addressing this data, Justice Melcer noted in his ruling on 8665/14 *Teshome Nege Desta vs. the Knesset* (August 11, 2015), that it reveals "incredible incompetence, if not deliberate negligence, in addressing the aforementioned applications for recognition." Justice Hayut ruled in this matter that "the comparison [of recognition rates] alone gives rise to questions with regards to how the State is adjudicating, and making determinations regarding these requests, with the end result attesting to the process' execution."

²⁴ See for example the ruling in HCJ 571/89 *Moscowitz vs. the Council of Appraisers* (1990).

²⁵ *M.S.S. vs. Belgium and Greece*, Application no. 30696/09, p. 105 (21 January, 2011).

5. Access to the Asylum System

Over the past two years, Israel's asylum system has demonstrated that it is not prepared to deal with a rise in the number of asylum requests.

Since the establishment of the RSD Unit in 2009 and until recently, asylum applications were filed at the Unit's office in Tel Aviv, where asylum interviews were also conducted. At times when the number of asylum applications filed was relatively low, it appears that asylum seekers attempting to file the application did not encounter any significant obstacles (except applications of citizens of Sudan and Eritrea during certain periods in which they were prevented from filing asylum applications, as will be detailed in chapter 9).

However, at times when the number of people applying for asylum increased, the access to the asylum system was impaired.

The RSD Unit in Tel Aviv is located on a narrow street in an urban area. There is no designated waiting area, and Applicants must wait along the narrow sidewalk outside the building. Inside the building the waiting area can hold no more than a few dozen people.

Since 2016 and until the first months of 2018, Israel witnessed a sharp rise in the number of people applying for asylum. This increase can be attributed to two main factors. The first is the sharp rise in the number of asylum applicants from Georgia and the Ukraine. This growth stemmed from the tourist visa waiver given to citizens of these countries in recent years, and misleading information publicized by actors seeking to "import" employees to Israel, about the ability to obtain work permits in Israel by taking advantage of the asylum system.²⁶

The other factor were changes in the policy toward citizens of Sudan and Eritrea. As will be shown in chapter 9, until 2013, Israel prevented citizens of these two

²⁶ HRM, *Knocking at the Gate – Flawed Access to the Asylum System due to the influx of applicants from the Ukraine and Georgia* (Sep. 2017) hotline.org.il/en/publication/knocking-at-the-gate/

countries from filing asylum requests. Afterwards, PIBA continued to put in place negative incentives for filing asylum applications. Eritrean citizens who file asylum applications are usually summarily rejected because the Ministry of Interior refuses to recognize unauthorized exit from Eritrea and defection from military or national service as grounds for asylum. Meanwhile, asylum requests of Sudanese citizens from regions experiencing genocide and ethnic cleansing are not processed in practice. At the same time, the Israeli government applies a policy of "non-removal" to this population, even if they do not file asylum applications (more on this below). As a result, some Eritrean and Sudanese asylum seekers in Israel have not filed formal asylum applications for years, and simply make do with the limited protection offered to them under the "non-removal" policy.

As will be discussed below, in recent years the State of Israel has tried to bring about the deportation of asylum seekers to third countries, while drawing a distinction between those who did not file asylum applications, those who filed asylum applications but have not received a determination, those who filed asylum applications and were rejected, and those who filed asylum applications and received a positive response. This distinction created a new incentive for Eritreans and Sudanese who have not filed asylum applications before, to do so.

The system put in place to receive asylum applications was overwhelmed by the rise in the number of applicants. Starting in September 2016, asylum seekers wanting to file applications had to wait outside the offices of the RSD Unit for days, sleeping on the sidewalk outside the offices, exposed to the elements and without basic facilities such as bathrooms or running water.

A petition filed by the HRM in September 2017 included affidavits about wait-times of over 24 hours to file an asylum application.²⁷

In November 2016, due to the sharp rise in the demand for its services, the Unit began allowing asylum seekers to arrive between 07:00 and 08:00 in the morning to receive notes indicating the time and date when they could file their asylum

²⁷ HCJ 7501/17 *Hotline for Refugees and Migrants vs. the Minister of Interior*. Petition filed on September 27, 2017. Available in Hebrew: <https://tinyurl.com/y9cxzxb7>

application. These notes did not include any identifying information and did not protect asylum seekers from detention where the applicants were not Sudanese or Eritreans. Nor did these notes allow the future applicants to be employed while waiting to file the asylum applications (unlike those who had filed asylum applications and were given permits under Article 2(A)(5) of the Entry to Israel Law, which protected them from detention and deportation and effectively allowed them to work under the non-enforcement policy mentioned previously).

In January 2017, the RSD Unit stopped setting future dates for filing asylum applications. At this point, filing an asylum application became nearly a "mission impossible". Asylum seekers testified that they arrived at the offices of the Unit time and time again, and after waiting in line for a whole day, usually returned home without having filed the application.

The inability to file asylum applications resulted in a series of troubling side-effects. The invitations to file an asylum application at a future date (which were given, as mentioned above, without the name of the applicant) became a traded commodity. This gave rise to criminal instances of violence and extortion, which were brought to the attention of Israel's law enforcement authorities by the HRM, which demanded their investigation and eradication. It should be mentioned that although the notes handed out by the Ministry of Interior did not bear the names of the applicants, their details were documented in the Ministry's computer system. Asylum seekers who arrived at the unit with notes given to others were arrested on suspicion of forgery.

The violation of the right to file asylum requests resulted in the filing of numerous petitions to the Appeals Tribunal.²⁸ Although the Ministry of Interior notified the Appeals Tribunal in December 2017 that the lines to file asylum applications had become significantly shorter, a Tribunal judge, after making a surprise visit to the office of the RSD Unit, stated in her ruling that "all the phenomena described in the large number of appeals filed in recent months are indeed a reality. Among other things, prolonged waiting in lines, the management of the lines

²⁸ See for example Appeal (Tel Aviv) 1134-18 G. R. G. vs. *the Ministry of Interior* (filed on March 4, 2018), which was pooled with 154 other appeals regarding the inability to file asylum applications. Only following the hearing on the matter were the applicants allowed to file for asylum.

by external actors, irregularities, violence and thuggery, when in reality, most of those waiting are doing so in vain, because in practice, only a handful are allowed inside, and even those entering oftentimes are prevented from filing the asylum application.”²⁹

In January 2018, additional repercussions of the denial of the right to file for asylum became apparent. At this time the Ministry of Interior advanced a policy of deporting asylum seekers to third countries: Uganda and Rwanda. Under the regulation concerning deportations to third countries issued on January 1, 2018 and amended at the end of January 2018, the regulation applied to ‘infiltrators’ who had not filed an asylum application, filed such an application and were rejected, or those who filed asylum applications after January 1, 2018.³⁰ Therefore, had the deportation to a third country not been prevented for other reasons, there wouldn’t have been any impediment, according to the regulation, to detain and attempt to deport those who tried to file asylum applications but failed to do so, or tried to file an asylum application before January 1, 2018 but only managed to file the application after that date.

As mentioned above, in September 2017 the HRM filed a petition to the High Court of Justice regarding the inability to file asylum applications. As part of the legal proceedings, it was proposed that during times when the number of applicants increases, the Ministry of Interior would accept applications through other means, including electronically. In response to the petition, the State declared that it was aware of the high workload of the Unit and announced that it intended to adopt a series of steps to resolve it, including recruiting additional manpower, extending the Unit’s hours of operation and moving it to a more spacious facility.³¹ Eventually, the Supreme Court decided not to rule on the urgent question that affects the ability to apply for asylum and the liberty of those who tried but failed to file an application, and preferred to use the petition to

²⁹ Appeal (Tel Aviv) 4881-17 *Ashurfuling vs. Ministry of Interior* (ruling issued on December 21, 2017).

³⁰ Regulation number 10.9.0005 Removal to Third Countries, second version (January 30, 2018), article 3.1. Available in Hebrew: <https://tinyurl.com/yclo4wom>

³¹ Statements of the respondent from January 2, 2018, January 28, 2018 and March 25, 2018 as part of the proceedings surrounding H CJ 7501/17 *Hotline for Refugees and Migrants*.

deliberate on the matter of whether such petitions should be adjudicated at the High Court of Justice, at the Administrative Court or at the Appeals Tribunal in cases brought forth by a specific applicant. Eventually, more than seven months after filing the petition (during which it was effectively impossible to file asylum applications for a large share of the time), the Court vacated the petition and ruled that the appropriate legal instance is the District Court, presiding as an Administrative Court.³²

The issue of long lines was eventually resolved in late January 2018 when the Ministry of Interior decided that asylum applications would be filed at the Immigration Authority office in Bnei Brak. Asylum applicants were notified of this change in a note written in Hebrew only, posted on the door of the Tel Aviv office.³³ The move was also accompanied by a significant reduction in the number of those seeking to apply for asylum. It should be noted that asylum applicants from the Ukraine and Georgia are still required to file their asylum applications at the office in Tel Aviv, which also reduced the workload of the Bnei Brak office.

However, these events cast doubt on the ability of the RSD Unit to deal with possible increases in the number of asylum applicants in the future, and to ensure that such an increase does not impair the basic right to apply for asylum.

³² Ruling issued on April 9, 2018 on the matter of HCJ 7501/17 *Hotline for Refugees and Migrants*.

³³ Ilan Lior, *Asylum-Seekers Who Arrived to File Asylum Applications in Tel Aviv Discovered that the Office was Moved to Bnei Brak Without Prior Notice*, Haaretz, January 31, 2018. Available in Hebrew: <https://www.haaretz.co.il/news/education/.premium-1.5782219>.

6. Factual Findings and Credibility Assessments

In our 2012 report we detailed the deeply flawed methods used by the Ministry of Interior to make factual findings and assess the credibility of applicants. These methods are apparently intended to make asylum applicants fail credibility assessments, finding "incongruities" where none exist.³⁴ The 2012 report notes that "the interviews extend for long hours, focusing on peripheral matters and insignificant and marginal details which no person can be expected to remember. Every mistake or lapse of memory is attributed to 'lack of credibility', which consequently justifies rejecting the asylum application."³⁵

In the 2012 report, we also explained that with regards to the credibility of witnesses, according to Israeli jurisprudence, incongruities and inaccuracies do not necessarily indicate that a person is lying, and that when a person's credibility is examined, the focus should be on whether the "crux" of the narrative is consistent, instead of on inconsequential details.³⁶ We showed that courts in the United States, Canada and Australia ruled on several occasions that asylum seekers should not be found lacking in credibility due to inconsistencies or inaccuracies on inconsequential details that are not at the heart of the asylum application.³⁷ We also referenced psychological studies that explain why asylum seekers, who are expected to retell the same story again and again, should not be expected to describe the experience in identical terms due to the tendency of

³⁴ *Until Our Hearts are Completely Hardened*, footnote 1, p. 28-34.

³⁵ *Ibid*, p. 30.

³⁶ Criminal Appeal 1258/03 *John Doe vs. the State of Israel* (2004); Criminal Appeal 993/00 *Nour vs. the State of Israel* (2002); Criminal Appeal 3372/11 *Katzav vs. the State of Israel* (Nov. 10, 2011).

³⁷ *Vilorio-Lopez vs. INS*, 852 F.2d 1137, 1142 (1988); *Kwok vs. Gonzales*, 455 F.3d 766, 769 (2006); *Giday vs. Gonzales*, 434 F.3d 543, 551 (2006) (United States); Immigration and Refugee Board, Refugee Protection Division, *Assessment of Credibility in Claims for Refugee Protection*, 2004, section 2.3.4 (Canada); *Guo vs. Minister for Immigration and Ethnic Affairs*, 64 FCR 151, 194 (1996) (Australia).

human memory to undergo reconstruction.³⁸

Since the publication of that report, the Ministry of Interior's flawed methods to assess the credibility of asylum seekers have not undergone any significant changes. The credibility assessment still focuses on inconsequential details of the asylum claim and not its crux. In many cases, the RSD Unit adopts a contrived interpretation of the statements made by asylum seekers to "create" inconsistencies where none exist.

We shall demonstrate this with a number of cases.

What is an Apartment Move, and What is an Arrest?

In her asylum interview, Lemlem (pseudonym), an Ethiopian citizen represented by the HRM, described how her partner defected from the military with his weapon and exited the country without authorization. She alleged that the Ethiopian military persecuted her as a result. In her asylum application she said that because of the threats from the military she had to change her place of residence ("I have to change place," as she wrote in the application). Her application for asylum was rejected due to lack of credibility.

One of the explanations the RSD Unit gave for the rejection stated: "while in the asylum application the Applicant declared that she received warning from the Federal Police in Ethiopia and therefore had to change places of residence, during her interview she declared that she lived her whole life in Addis Ababa. Therefore, this is an inconsistency that will be taken into consideration against her."

This case demonstrates how the RSD Unit forces an interpretation of the claims of asylum seekers that is intended to "expose" imaginary inconsistencies. It is evident that Lemlem never claimed she had left Addis Ababa. She said that she changed places of residence, which is not inconsistent with the claim that she had lived her whole life in Addis Ababa, if the moves were between different

³⁸ 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, 294 (2009); Jane Herlihy & Stuart W. Turner, *The Psychology of Seeking Protection*, 21 INT'L J. REFUGEE L. 171, 191-192 (2009)

places of residence in the same city. Those conducting the interview never asked the simple question: "From where to where did you move?"

In Lemlem's case, the RSD Unit found another "inconsistency." During her asylum interview, she described an event in which three soldiers forcibly put her in a vehicle and took her to a house in a place she was unfamiliar with, where they violently interrogated her and, following the questioning, one of the soldiers raped her. The Unit ruled that in its legal opinion there was an "inconsistency" in her application, because in the asylum application she responded with a negative to the question "Have you ever been arrested?"

One is left to wonder why the RSD Unit finds it inconceivable that a woman kidnapped from her home by three soldiers and taken to a strange house - not a police station or any other government facility - does not describe the event as an arrest. The absurdity of this position is only intensified when, in the same legal opinion the Unit states that Lemlem's claim that she had been persecuted by the authorities cannot be accepted because "the applicant was never arrested, no charges were filed against her and she was not put on trial."

At this point we will not address the legally unfounded interpretation that persecution by state authorities necessarily manifests in detention, filing of charges and prosecution; instead we will focus on arguments concerning credibility. To reach the conclusion that Lemlem is not credible, the Unit interpreted the event as an instance of detention, contradicting her claim that she had not been arrested. However, to conclude that she was not persecuted, the Unit did not recognize the event as detention, thus contradicting itself.

Who is an English Speaker?

As part of a case handed by the Clinic for Refugee Rights at the Tel Aviv University, the RSD Unit conducted an interview with an asylum-seeker from Nigeria. In its legal opinion the Unit found him to not be credible because, among other things, during the interview in which he detailed the languages he speaks, he did not mention that he speaks English. The legal opinion rejecting his asylum application stated that during the interview, the asylum-seeker said the word "sorry" several times when he wished to correct a statement; he used the word

"post" when asked about the zip code in his area of residence, and he once used the word "normal."

The conclusion of the Unit was:

"The subject presented himself as uneducated, but this raises the question as to why he used words in the English language as part of his response to questions, a language he claims not to speak. The subject was not confronted with this fact, but it should not be taken lightly, as this alone raises the question about the credibility of the subject on this linguistic matter, and therefore reflects on his statements about allegedly not knowing other languages, such as Amharic."

It is hard to describe the absurdity in the claim that using three words in English indicates the lack of credibility in the claim that the asylum-seeker is not an English-speaker. This is particularly so when these are words used by many Hebrew-speakers in conversational Hebrew.

Who Uses a Toyota?

The case of an asylum-seeker from Chad demonstrates the flawed manner of determining factual findings by the RSD Unit. In this case, an asylum-seeker whose father was a political activist, claimed that he arrived home one day to discover that his father and the rest of his family had been murdered, and that upon arrival, he saw a Toyota vehicle fleeing the scene. The asylum-seeker claimed that only the government uses Toyota vehicles, and thus, there is no doubt that governmental actors were responsible for the murder of his family.

In its legal opinion, the Unit, which rejected his application, stated that the use of Toyota vehicles is not limited to the government alone, and is in fact so widespread that the "war in Chad" had earned the nickname "the Toyota War." The legal opinion did not reference any sources. An examination conducted by the Clinic for Refugee Rights at Tel Aviv University, which represents the asylum-seeker, showed that during a war between Chad and Liberia in 1987, three decades earlier, **the name "the Toyota Wars" was used because the Chadian government commonly used this type of vehicle to transport soldiers.**

Who is a Lesbian?

In a case of a female asylum-seeker from Ghana, represented by Adv. Yadin Elam, the RSD Unit veered into the realms of absurdity when determining the sexual orientation of the asylum-seeker.³⁹ In this case, the asylum-seeker claimed that she was persecuted in Ghana for maintaining a relationship with a woman.

The Unit's legal opinion offered an extensive and strange doctrine regarding sexual orientation, its meaning, its characteristics and its formation. The strange perceptions that led to the factual findings regarding the sexual orientation of the asylum seeker are no less eye-opening.⁴⁰

In brief, although the Unit accepted the asylum-seeker's claims that she maintained a romantic relationship with a woman, the legal opinion found that the woman is not "really" a lesbian, and therefore does not meet the criteria of the Refugee Convention. This determination was based on the fact that when the applicant was younger, she maintained a relationship with a man with whom she had sex. In addition, she did not specifically claim to be physically or romantically attracted to women. The legal opinion also took into account that only after the man who was her partner cheated on her did the asylum-seeker begin maintaining relationships with women, as well as her statement according to which, she did so because she wanted security.

The Unit also concluded that the asylum-seeker is not a lesbian because she "displayed a lack of knowledge of terminology of the LGBT community," as when asked how she reached the conclusion that she is a lesbian, she replied that she did not understand the question. Another of the Unit's reasons was based on a different question: when asked when she first felt interested in women, she said she did not remember. The legal opinion stated that "it is expected of a person living a homosexual lifestyle to be familiar with and know certain terms of this

³⁹ For extensive critique of this case, see: Yonatan Berman, *LGBT Refugees in Israel*, in *The Rights of the LGBT Community in Israel: Law, Sexual Orientation and Gender Identity*, eds. Einav Morgenstern, Yaniv Lushinsky, Alon Harel, pp. 1072, 1096-1100. Available in Hebrew: <https://bit.ly/2me2soc>.

⁴⁰ Ibid. pp. 1096-1098.

community, and that he will know how, at the very least, to describe his feelings and passions that led him to such meaningful changes in his life.”

The legal opinion argued that “a ‘surprising’ discovery (without any early signs) of sexual orientation at a late age, after maintaining real relationships with men, is improbable to the point of impossibility.” The writer of the legal opinion concludes: “the applicant failed to establish her identity as a lesbian or as a woman attracted to women, and her claims of being a lesbian cannot be accepted. At most, it is possible she had sex with a woman, [...] and also maintained some form of a ‘relationship’ with her, but her claim for a clear and real lesbian identity cannot be accepted.”⁴¹

These conclusions by the RSD Unit (as well as other conclusions) are enough to understand the absurdity of this legal opinion. The attempt of the RSD Unit to disprove the claim of the asylum-seeker that she would face threats in her country of origin due to her sexual orientation makes a distinction between persecution for acts that have an external manifestation (having a relationship with a woman) and persecution due to some internal characteristic. The result would be comical if the life of a woman was not at stake. The legal opinion described above attests to groundless assumptions about sexual desire, its essence, its character, its development and rigidity, to the point that it is hard to believe that the document cited above was issued by a state authority. Considering that the employees of the Unit undergo training on matters of gender and LGBT, one would expect such groundless beliefs to be excluded from a legal opinion issued by the Unit.

What is the Political Role of a Client?

In another case, also handled by the Clinic for Refugee Rights at Tel Aviv University, the RSD Unit rejected an asylum application, as well as a request to review the decision, of a Nigerian citizen who claimed to have been a political activist and persecuted on these grounds. According to the asylum-seeker, he took an active part in the struggle against corruption, joined efforts to collect evidence against the Nigerian president, and led a campaign demanding an investigation of the president. Due to the activism of the organization to which

⁴¹ The name of the woman has been omitted due to privacy concerns.

he belonged, his brother was murdered in his home, and three of his fellow activists were murdered as well. He claimed he had been able to hide for several months, after which he fled the country.

The asylum-seeker presented a card indicating his affiliation to the organization in which he was active, and a report in a print newspaper that included a photograph of him participating in a protest against the president. During his asylum interview he displayed knowledge of Nigerian politics, as well as people and organizations operating in the Nigerian political scene. Despite all this, the Unit's decision to reject the application again focused on marginal details intended to cast doubt about the credibility of the asylum-seeker. The legal opinion was also grounded in ridiculous assumptions.

Despite the fact that the asylum-seeker presented his membership card in the opposition organization and the newspaper displaying his image during a protest, the RSD Unit ruled that one would expect to find additional mention of the asylum-seeker's activism online, and because these were not found, his claim about extensive political activism is implausible. Despite the comprehensive knowledge he displayed regarding Nigerian politics, the Unit preferred to focus on the fact that he mentioned that as part of his day job, he fixed an electrical appliance in the home of a certain political figure, but he did not know their exact role in Nigerian politics. The legal opinion which rejected the asylum application after an additional review, claimed that the fact that the applicant did not know the role of the person in whose home he fixed an electrical appliance "completely undermines the basis for his application and bolsters the conclusion that the applicant is not credible."

Who is Persecuted?

In one case, the RSD Unit recommended rejecting the asylum application of an Ethiopian citizen who was a political activist in his country of origin and claimed that he was persecuted for this. One of the arguments for rejecting the application was the fact that the relatives of the asylum-seeker are living peacefully in Ethiopia and that the regime does not harass them.

But in another case, in which the Ministry of Interior tried to convince the court

that an asylum-seeker whose father is a political activist would not be persecuted in Ethiopia, the Ministry of Interior presented the legal opinion of the Ministry of Foreign Affairs, stating that there are no known cases of detention in Ethiopia due to family connection to political activists. The opinion added that the treatment of relatives depends on the status of the family member who is politically active and how much time has passed since the activist left the country.⁴²

It is apparent here that the RSD Unit changes its position in each case, selecting the one that will result in a rejection of the application for asylum. When an Ethiopian asylum-seeker claims that he is persecuted for the actions of a relative, the legal opinion of the Ministry of Foreign Affairs is brought forth, arguing that relatives of political activists are not subject to persecution. On the other hand, when an asylum-seeker claims that he himself is at risk of persecution for political activism in Ethiopia, the position of the Unit is that relatives of persecuted activists would also undoubtedly face persecution, and hence the lack of their persecution proves that the asylum-seeker himself would not face persecution.

It is evident that the RSD Unit suffers from lack of consistency and credibility on important and essential matters.

These are just a handful of examples among countless cases demonstrating how the RSD Unit reaches its conclusions. There is almost no asylum application in which the Unit finds the asylum-seeker to be credible. In the request to review anew the latest case described here, the lawyer representing the asylum-seeker aptly described it thus:

"Since its establishment in 2009, the RSD Unit of the respondent [PIBA] has adopted a terrible habit that it seems to be unable to shake, of registering every mistake, moments of confusion or lapse in memory that asylum seekers make before it. Those are immediately interpreted by the Unit as 'lies,' presented as an extensive list. This list is the only thing the Unit takes into account when assessing the credibility of asylum seekers. External evidence,

⁴² Administrative Petition (Jerusalem) 729-09-11 *Solomon vs. Minister of Interior*, response from November 28, 2011, para 35.

display of knowledge, consistency throughout hours upon hours of interviews - all of these do not matter to the Unit.

In effect, the clerks of the respondent are not engaged in assessing credibility, but in pedantic gathering of mistakes and omissions and assembling them into a collection, without ever relying on sound judgment. The respondent [Ministry of Interior] does not distinguish between issues at the crux of the matter and minutiae, between inconsistencies and lack of knowledge, between a significant mistake and a small one, etc. The respondent does not pay heed to the circumstances that led to the aforementioned mistakes - whether they are the limitations of the human mind (forgetfulness, confusion, stress, or merely lack of omnipresent knowledge of every single detail in the world), and whether these are limitations stemming from the [conditions of] interviews themselves (lack of legal representation, interviews conducted as police interrogations)."

7. A Narrow and Erroneous Interpretation of the Provision of the Refugee Convention

Some legal opinions issued by the RSD Unit feature an incorrect interpretation of the definition of "refugee" under the Refugee Convention. This erroneous interpretation is always a narrow one, leading to the conclusion that the asylum-seeker is not, in fact, a refugee.

A refugee is defined by the Convention as a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country."

The three main elements of this definition, which the Ministry of Interior incorrectly and narrowly interprets, include the meaning of the concepts "well-founded," "persecution," and the definition or application of the five possible grounds for persecution found in the Convention.

We shall present a few examples, addressing only the determinations made by the RSD Unit on whether the factual claims at the heart of the asylum application meet the definitions found in the Refugee Convention, and not the separate matter of credibility of the claims, which we cover in a previous chapter.

Does the Critique of a Regime Constitute a Political Opinion?

In the case of an asylum-seeker represented by the Clinic for Refugee Rights at Tel Aviv University, the RSD Unit rejected the application of an Ethiopian citizen who claimed that he had been persecuted for being a political activist, and because he had criticized how elections had been conducted in his country. The decision of the Unit determined, among other things, that the persecution he fears is not due to holding a political opinion, as the Convention requires, and therefore, he should not be recognized as a refugee.

It should be mentioned that causality between persecution and certain reasons

provided by an asylum-seeker might not be clear-cut, and might raise multiple questions related to interpretation of terms such as religion, race, nationality, belonging to a certain social group and political opinion. However, a case of persecution by a regime due to criticism levied against the regime, pertaining to the conduct of elections, is an easy case, a no brainer.

The UNHCR handbook, which serves as a guide for interpreting the Refugee Convention, explicitly states that persecution due to holding a critical position toward the policies of a government or the methods employed by it constitute persecution on ground of political opinion, as defined by the Convention.⁴³ Courts in multiple countries have ruled similarly more than once.⁴⁴ Moreover, the Israeli Supreme Court has explicitly adopted this position:

"The typical cases of 'political persecution' are those cases in which a person is persecuted by the authorities of the government in his country (or by other actors from whom state authorities in his country are unable to protect him) - due to membership in a certain political party, and due to holding a certain known political ideology. The persecution of a person for holding (or being perceived to hold) political positions contrary to those of the government, or the ruling party, are included in the grounds for persecution based on 'political view' or 'political opinion.' The same applies when the persecution stems from a public expression of opinions that are not 'tolerated' by the government, or positions that entail criticism of governmental officials (see for example, article 60 of the [UNHCR] Handbook."⁴⁵

If this was not enough, in the matter of this particular asylum-seeker, the criticism concerned the most political matter of all - election campaigns. But the RSD Unit insists that persecution due to criticism of the government with regards to the conduct of elections is not persecution based on a political opinion.

⁴³ 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. 80.

⁴⁴ See for example: *Canada vs. Ward*, [1993] 2 S.C.R 689, 747 (Zimbabwe); *RT vs. Secretary of State for the Home Department*, [2012] UKSC 38 (United Kingdom).

⁴⁵ Administrative Appeal 1440/13 *Chima vs. the Ministry of Interior*, para 30. Issued on August 7, 2013.

Does Detention in a Re-Education Camp Constitute Persecution?

The RSD Unit handed down a legal opinion recommending the rejection of an asylum application of a citizen of Myanmar (Burma) represented by Adv. Yadin Elam. The asylum-seeker claimed, among other things, that as a teenager, he was placed in a 're-education' camp because his family opposed the Burmese regime, that his father died in prison and his mother was jailed for four years. The asylum-seeker described the violence and other abuses to which he was subjected in the camp, but this did not impress the Unit.

The legal opinion of the Unit stated that the authorities in this camp "took care of his needs, such as food and education. This is not extraordinary maltreatment and the applicant cannot base his well-founded fear on the institution in which he stayed."

Is the Refusal to Murder Civilians a "Disciplinary Offense" for which Punishment Does Not Constitute Persecution?

In another case handled by the Clinic for Refugee Rights at Tel Aviv University, an Eritrean asylum-seeker claimed that as part of his compulsory military service, he was stationed at the border and ordered to shoot any Eritrean civilian who attempt to escape the country. This is a patently illegal order which the asylum-seeker refused to carry out, and even expressed opposition to the order in public during meetings with his friends. As a result, he was threatened with punishment (for more on methods of punishment in the Eritrean military, see chapter 9), and therefore decided to flee the country. After his escape, his mother was placed in detention for four months for his action.

The legal opinion of the RSD Unit from August 2017 stated:

"This is a disciplinary offense entailing a refusal to carry out a commander's orders to kill infiltrators to Ethiopia and public expression of this in two public gatherings. In June 2009, the applicant took the law into his own hands and defected from military service, after his friends advised him to leave the country to avoid going to prison."

Based on this analysis, the Unit reached the conclusion that the applicant was

not persecuted on political grounds and therefore does not meet the definition of a refugee under the Refugee Convention.

A conscientious objection to carrying out an order to murder civilians (even if they are "infiltrators," as the Unit labels them) and expressing opposition to such murders are unmistakably political acts. There is disagreement as to whether a conscientious objector who faces punishment meets the criteria set forth in the Refugee Convention. However, there appears to be a consensus that opposing illegal actions of the military and refusal to carry out actions that result in punishment in the form of deprivation of liberty, do constitute persecution on grounds of holding a political opinion as defined by the Refugee Convention. Thus, for example, the guidelines of the UNHCR inform that opposition to military service that includes carrying out actions in contravention of "basic rules of human conduct," should be seen as a political opinion, or a political opinion imputed to a person by government authorities, and that punishment for such refusal constitutes persecution.⁴⁶ The UNHCR's Handbook adopts the same position,⁴⁷ as does the legislation of the European Union.⁴⁸

The casual attitude of the RSD Unit to a refusal to carry out an order to murder civilians, and protesting this murder, by labeling it a "disciplinary offense," is astounding, to say the least.

⁴⁶ UNHCR, *Guidelines on International Protection no. 10: Claims to Refugee Status related to Military Service within the Context of Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, para. 21, 30, 52 (12 November 2014), <https://tinyurl.com/y7unywmo>

⁴⁷ 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 171 ("It is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action. Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft-evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution").

⁴⁸ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Article 9.2(e).

8. Translation

In December 2017, the HRM published a report about faulty translation in asylum proceedings in Israel.⁴⁹ The main problems related to erroneous translations are described below.

The UNHCR published standards for translating asylum interviews⁵⁰ which the RSD Unit fails miserably to meet. These standards require translators to undergo training that provides basic information about the Refugee Convention, asylum proceedings, terms that asylum seekers may use in interviews, the role of the translator and the importance of accuracy, sensitivity to gender, age and culture, and indicators of trauma that may arise during the interviews.⁵¹

The importance of translation in asylum proceedings seems self-evident. We highlighted its significance in our 2012 report in which we noted that the RSD Unit determines that every inconsistency or "contradiction" between statements made in one interview and another, or between statements made in different parts of the same interview, is an indication of "lack of credibility" that serves as grounds for rejecting asylum applications. It is clear, therefore, that any inaccuracy in translation may have repercussions on the fate of the asylum application.

But translators are not machines, translation is not a technical job and a person

⁴⁹ HRM, *Lost in Translation: Failings in Asylum Proceedings Due to Erroneous Translation*, December 2017. Available in Hebrew: <https://hotline.org.il/wp-content/uploads/2018/03/HRM-Lost-In-Translation-HEB-2017-Final-1.pdf>.

⁵⁰ UNHCR, *RSD Procedural Standards – Interpretation in UNHCR RSD Procedures* (2016), <http://www.refworld.org/docid/56baf2634.html>.

⁵¹ The UNHCR's Executive Committee, which runs the UNHCR (and adopts its decisions unanimously and includes Israel as a member), passed a resolution determining that there is great importance in conducting asylum interviews through **competent** translators. UNHCR, *Executive Committee Conclusion No. 8 (XXVIII), Determination of Refugee Status, 1977*, <http://www.refworld.org/docid/3ae68c6e4.html>.

speaking two languages might not necessarily be a successful translator. Courts in the United States have recognized that even when asylum interviews are translated, the translations often contain errors.⁵² The Israeli Supreme Court, as part of a ruling concerning faulty translations, referred to the 2012 HRM report and adopted the position that “even with the most skilled of translators [...] it is only natural that some misunderstandings and inaccuracies will emerge, stemming from the differences between languages, the pace of the conversations vs. the pace of translation, inadvertent errors of the translator, etc.”⁵³

In our 2012 report we mentioned part of a study that reviewed 200 asylum interviews, in which it was established that translation errors often occurred as a result of words with multiple meanings, various nuances, the exchange of active and reflexive verbs, errors in translating tenses and more.⁵⁴ We also mentioned another research based on analyses of asylum interviews, which pointed out the problem of asylum seekers being unable to monitor the translation of their own words, and the fact that many interpreters only translate a “summary” of the asylum seekers’ reply and omit words they consider not to be vital, which may lead to the loss of some of the information provided by asylum seekers.⁵⁵

This is the case when professional translators are employed, and these problems are even more apparent in the case of the Israeli asylum system, in which translators do not specialize in translating asylum interviews. The translators of these interviews are employees of an external company, who, as far as we know, are only required to know Hebrew and another language. They do not receive any instruction in translation or training on how to translate asylum interviews.

In the HRM December 2017 report, which focused on translation, we provided

⁵² *Maini vs. INS*, 212 F.3d 1167, 1176 (2000); *Bandari vs. INS*, 277 F.3d 1160, 1166 (2000); *Gabuniya vs. US Attorney General*, 463 F.3d 316 (2006); *Giday vs. Gonzales*, 434 F.3d 543, 553 (2007); *Sarr vs. Gonzales* 474 F.3d 783, 793-794 (2007).

⁵³ Administrative Appeal 8675/11 *Teda vs. the RSD Unit*, para 20 (issued on May 15, 2012).

⁵⁴ 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.

⁵⁵ Sonja Pöllabauer, *Interpreting in asylum hearings: Issues of role, responsibility and power*, 6(2) *Interpreting* 143 (2004).

examples of incorrect translations of terms and challenges that translators encountered in trying to translate terms used by asylum seekers in interviews, some of them basic concepts, and at times, some crucial in understanding the crux of the asylum application. The report also provided examples of instances in which translators, on their own initiative, added clarification questions, or added their own interpretations instead of translating the statements of the interviewer or interviewee word-for-word. The HRM report also detailed cases in which comparisons between the protocol written by the interviewer during the interview and the recordings of the interview showed serious errors in translation.

The RSD Procedure addresses this matter, decreeing that the interviews of asylum seekers must be "conducted in the official language of the Applicant's country of citizenship, which he speaks, or in any other language which he understands, and if need be, the interview will be conducted through a translator." The RSD Procedure thus obligates the State to conduct interviews in a language the asylum-seeker understands, even if this is not the official language of his or her country. But in reality, the RSD Unit sometimes demands that asylum seekers provide their own translators for the language they speak, making it clear that unless they provide such translators, they might be interviewed in a language they do not understand. The HRM recently became aware of a series of cases in which the RSD Unit employees notified asylum seekers that unless they bring translators with them to their interview, at their own expense, their asylum application will be summarily rejected. The HRM filed a petition to the Jerusalem District Court against this practice; the petition is still pending.⁵⁶

Despite the multiple errors in asylum interview translations, and the Supreme Court ruling mentioned above which explicitly states that even when the most skilled translator may make errors, that those errors must be taken into account, the Unit completely ignores arguments concerning these errors. In multiple protocols of interviews examined by the HRM, when applicants were confronted with "inconsistencies" in their statements, they explained them by stating that their words were not translated properly. In all those cases, the applicants were found not to be credible, and their argument regarding the errors in translation

⁵⁶ Administrative Petition 30929-06-18 *Hotline for Refugees and Migrants vs. the Ministry of Interior*.

was not considered or examined.

It should be mentioned that it would not require much effort by the RSD Unit to examine claims of errors in translation, since all interviews are recorded and filmed. When an interviewee claims that he did not make a statement recorded in the protocol, the Unit should be able to easily locate the section in the recording in which the statement was made (or not) and examine the claim regarding the translation. But in all cases when interviewees blame faulty translations to explain “inconsistencies” or inaccuracies, the Unit rejects these claims without any such examination.

Thus, for example, in an interview conducted with Yerusalem (pseudonym), an Ethiopian asylum-seeker, she was asked the years in which she lived in Sudan and how many brothers does she have. Her responses in the comprehensive interview supposedly did not match a previous interview. Yerusalem attributed the inconsistency to faulty translation. Following this, the Unit found her not to be credible, without considering that her claim might be true, and without bothering to watch the recording of the interview to examine this claim.

Similarly, Appeals’ Tribunals, when adjudicating appeals against decisions to reject asylum applications, rush to cast aside claims regarding faulty translations.

For example, in a ruling issued in June 2018, the Appeals Tribunal rejected a claim about faulty translation of an asylum-seeker from China, who claimed to be practicing Falun Gong, a spiritual practice whose adherents are persecuted in China. The Tribunal stated that “in a few points during the interview, it is written [in the protocol] that the translator did not understand what the appellant wanted to say and therefore, there was a certain gap in the translation,” but the ruling added that this only occurred “in the very margins of the interview.”⁵⁷ It is unclear how in these situations, based on reading the Hebrew-language protocol of the interview and without examining its recording with the assistance of a competent translator, it is possible to determine that the translation indeed reflects the statements of the asylum-seeker.

⁵⁷ Appeal (Jerusalem) 4096-16 *Jane Doe vs. the Ministry of Interior*, para 28. Issued on June 3, 2018.

9. Citizens of Eritrea and Sudan

In a report published by the HRM in December 2014, we laid out the historical permutations of Israel's policies toward citizens of Sudan and Eritrea within its borders.⁵⁸ This report will address the matter only briefly, providing a concise description of the historical treatment of these groups, followed by an examination of the government's policies in recent years and in the present.

For years, Israel has not deported Eritrean and Sudanese citizens to their countries of origin. This policy stems from a recognition that returning them to their countries of origin may jeopardize their lives or expose them to the threat of persecution. The multiple human rights violations in Sudan have been described at length by the Israeli Supreme Court, and the same applies to the situation in Eritrea.⁵⁹ Most Sudanese citizens present in Israel today arrived from the Darfur region, the Blue Nile region and the South Kordofan area (also known as the 'Nuba Mountains'), which are experiencing a ferocious civil war, with some defining what is occurring there as genocide of certain ethnic groups. In Eritrea citizens are drafted into open-ended military or national service, which, according to the position of the UNHCR and multiple countries, has slavery-like aspects. Eritrean citizens of recruitment age who leave the country are perceived by the regime as political opponents, and face detention in inhumane conditions upon return to their country.⁶⁰

⁵⁸ HRM, *No Safe Haven: Israeli Asylum Policy as Applied to Eritrean and Sudanese Citizens*, December 2014. hotline.org.il/en/publication/no-safe-haven/

⁵⁹ HCJ 7146/12 *Adam vs. the Knesset*, para 6 to Justice Arbel's ruling (issued on September 16, 2013).

⁶⁰ See: UNHCR, *Eligibility Guidelines for Assessing International Protection Needs of Asylum-Seekers from Eritrea*, HCR/EG/ERT/11/01 (2011), p. 11, <https://tinyurl.com/ya3uj2ml>; UNHCR's Position on the Status of Eritrean and Sudanese Nationals Defined as "Infiltrators" by Israel (November 2017), <https://tinyurl.com/y9263pwu>; US Department of State, *Country Reports on Human Rights Practices for 2017: Eritrea*, p. 3 (Apr. 2018), <https://tinyurl.com/ychgk8dl>; OHCHR, *Special Rapporteur on the situation of human rights in Eritrea* (26 June, 2018), <https://tinyurl.com/ya2vqsd1>; Human Rights Watch, *Service for Life: State Repression and Indefinite Conscriptation in Eritrea* (2009), <https://tinyurl.com/ybt5qe5h>

The UNHCR's statistical yearbook for 2016 shows that 71.5% of Eritrean asylum seekers who received a response to their asylum application worldwide in 2016 were recognized as refugees. When adding to that the number of asylum seekers who received complementary protection, the rate reaches 90% of Eritrean applicants who were granted some form of protection. The same yearbook shows that 52.1% of Sudanese citizens who received a response to their application in 2016 worldwide were recognized as refugees; when adding those who received complementary protection, their share reaches 57.3%.⁶¹

In Israel, however, these two populations are treated entirely differently.

According to Ministry of Interior data published in July 2018, 25,552 Eritrean and 7,252 Sudanese citizens were present in Israel at the time.⁶² Over recent years, thousands of asylum seekers from those countries left Israel due to pressure exerted on them by the State of Israel to leave; most have gone to different Western countries.⁶³ As of the writing of this report, only one Sudanese citizen and ten Eritrean citizens have been granted refugee status in Israel.

For years Israeli authorities maintained an ambiguity with regards to the status of the asylum seekers from these two countries. Until 2013, the Ministry of Interior prevented citizens of Sudan and Eritrea from filing asylum applications, but at the same time, avoided deporting them. The citizens of these countries were not granted the permits provided to refugees, but instead were given permits under Article 2(A)(5) of the Entry to Israel Law (as explained in chapter 3, these are permits given to people against whom a deportation was ordered until their removal from the country). These permits do not grant the right to work or

⁶¹ UNHCR, *Statistical Yearbook 2016*, 16th edition (February 2018), Table 11.

⁶² PIBA, *Data on Foreigners in Israel*, 2nd edition for 2018, July 2018. Third table. Available in Hebrew: <https://tinyurl.com/yczanqzw>.

⁶³ Thus, for example, data of the Ministry of Interior from January 2012 shows that 30,943 Eritrean citizens and 14,348 Sudanese citizens were present in Israel at the time. PIBA, *Data on Foreigners in Israel*, 1st edition for 2012, table 2A. Available in Hebrew: <https://tinyurl.com/yc9bzhm2>. See also: PIBA, *Data on Foreigners in Israel: Summary for 2017*, January 2018, p. 8 graph 2. Available in Hebrew: <https://tinyurl.com/y8otns8j>.

any other rights. At the same time, in accordance with an obligation the State undertook before the High Court of Justice, the prohibition on employing citizens of those countries was not enforced.⁶⁴

Only in 2013 did the Ministry of Interior began allowing citizens of Sudan and Eritrea to file asylum applications. However, the Ministry of Interior adopted a policy of summarily rejecting the asylum applications of Eritrean applicants *en masse*, and with regards to Sudanese applicants, adopted a policy of not responding to the asylum applications at all.

We shall address each of these populations separately.

Citizens of Eritrea

Many of the asylum applications of Eritrean nationals are based on their escape from Eritrea without permission once they become eligible for forced conscription. According to the information available about Eritrea, an Eritrean citizen who leaves the country without a permit while of conscription age (18-50) is considered a political dissident by the regime and often faces imprisonment under inhumane conditions, torture and even mortal danger.⁶⁵ This naturally applies to those who were drafted, defected and left the country afterwards.

Conscripts do not know when they will be discharged, or whether they will ever be discharged, and disciplinary violations result in extreme corporal punishment.⁶⁶ In addition, the government views the military as a tool for social and political control.⁶⁷ Therefore, those who leave the country without a permit and do not serve in the army are seen as political or ideological dissidents, regardless of the motive behind their actions.⁶⁸ And as mentioned above, the harsh punishment for

⁶⁴ HCJ *Kav LaOved*, see footnote 16.

⁶⁵ See sources provided in footnote 60.

⁶⁶ *Ibid.* UNHCR Eritrea Guidelines 2011, p. 11.

⁶⁷ Nicole Hirit & Abdulkader S. Mohammad, *Dreams don't come true in Eritrea: anomie and family disintegration due to the structural militarisation of society*, 51 *Journal of Modern African Studies* 139 (2013).

⁶⁸ *Ibid.* at 155; UNHCR Eritrea Guidelines 2011 (see footnote 60), at 14-15; Human Rights Watch, (see footnote 60), at 27

deserters (reflecting the perception that these are political dissidents) includes imprisonment under inhumane conditions, torture, and executions, constituting a violation of international law in and of itself.⁶⁹

Because those who leave Eritrea without a permit at legal conscription age are seen as dissidents, the fate awaiting those who are returned constitutes persecution for imputed political opinions.⁷⁰ When the reason for persecution is examined for purposes of the Refugee Convention, the relevant question is not whether the persecuted person truly possesses the given characteristic that leads to their persecution. Rather, the reason for persecution is examined from the perspective of the persecutor. Therefore, when the government attributes political or ideological dissent to a person because they escaped the country, and therefore imprisons, tortures, or kills them, that person meets the conditions of the Convention Relating to the Status of Refugees, even if they do not actually hold the political opinion attributed to them.⁷¹

Recently, certain groups in Israel advocating for the deportation of asylum seekers from Israel are trying to create an impression that some European countries deport Eritrean asylum seekers. Specifically, they spread reports on social media that, following a verdict on the matter of Eritrean asylum seekers, Switzerland began deporting Eritrean asylum seekers. These claims are false. A position paper from the Swiss embassy in Israel in July 2018 clarified that this is not the case. The position paper explained that Eritrean citizens who have evaded or defected from military service are recognized as refugees, and that in any case, Switzerland does not forcibly deport Eritrean citizens.⁷² Data published

⁶⁹ UNHCR Eritrea Guidelines 2011 (see footnote 60), p. 14, note 103.

⁷⁰ UNHCR's Position on the Status of Eritrean and Sudanese Nationals Defined as Infiltrators" by Israel, (see footnote 60).

⁷¹ Administrative Appeal 1440/03 *Chima v. Ministry of Interior*, Justice Meltzer, para. 26 (Aug. 7, 2013). See also *Aguilera-Cota vs. INS*, 914 F.2d 1375 (1990), 1379-1380; *Canada vs. Ward* [1993] 2 S.C.R. 689, 747; Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted [2004] O.J. L304/12, 17, Article 10.2

⁷² Ambassade de Suisse en Israel, *Switzerland's policy towards Eritrean asylum seekers* (25 July, 2018).

by the UNHCR for 2017 indicate that the recognition rate of Eritreans as refugees throughout European Union countries, including Switzerland, remains very high.⁷³

In Israel, however, the Ministry of Interior insists on continuing to apply as narrow an interpretation as possible to the applicability of the Refugee Convention with regards to Eritrean citizens.

In April 2013, PIBA's legal adviser handed down an opinion that has been used by the Authority to reject asylum applications of Eritrean citizens *en masse*. According to the opinion, the persecution of a person due to defection from the military in and of itself can not constitute grounds for recognizing a person as a refugee.

All Ministry of Interior notices to Eritrean asylum seekers informing them of the rejection of their asylum application includes an identical text, stating that according to a legal opinion of the Ministry of Interior, defection from military service in Eritrea does not constitute grounds for asylum in Israel. This standard text appears in many cases in which asylum seekers presented other claims in addition to their defection from military service.

Take, for example, the asylum application of Bluts Eyyasu Zeru, a citizen of Eritrea, who claimed to have been a political activist against the regime and was detained and tortured for this activism. His application for asylum was rejected using the standard reasoning according to which defection from the Eritrean military does not constitute grounds for asylum under the Refugee Convention. In this case, the Ministry of Interior even went as far as to claim that "participation in political activities does not constitute grounds for asylum." Similarly, the RSD Unit recommended rejecting the asylum application of Yonas (pseudonym), an Eritrean who was placed in indefinite detention in his country of origin, and also rejected the asylum application of Emanuel (pseudonym), who underwent torture in Eritrea, utilizing the standard reasoning according to which defection from the military does not constitute grounds for asylum under the Refugee Convention.

The legal proceedings concerning this legal opinion have gone through the

⁷³ UNHCR, Overall recognition rate for Eritreans in EU countries (January 2018), <https://tinyurl.com/y8o6lrwl>.

jurisdiction of several courts, and as of the writing of this report, they are yet to be concluded.

In September 2014, the Appeals Tribunal accepted an appeal against a decision to reject the asylum application of an Eritrean citizen, ruling that the legal opinion of the Ministry of Interior should not be followed. The ruling determined that defection in and of itself does not constitute grounds for asylum, but when this defection is perceived as an expression of a political opinion, punishment for defection that exceeds reasonable bounds may rise to the level of persecution as defined in the Refugee Convention.⁷⁴

In January 2017, the Jerusalem District Court reversed the decision of the Appeals Tribunal after the State had filed an appeal on that ruling, and ordered the return of the case to the Tribunal. Among other things, the District Court stated that it is unclear from the Tribunal's ruling how it reached the conclusion that the Ministry of Interior legal opinion is wrong, adding that the Tribunal avoided discussing certain questions that must be addressed before a conclusion could be reached on the appeal.⁷⁵ After another hearing at the Tribunal, it once again reaffirmed its initial ruling. The Tribunal's second ruling, handed down in February 2018 after a review of various international sources, determined that the Eritrean regime imputes a political opinion to those who defect from the Eritrean military and persecutes them for this perceived political opinion. The Tribunal ordered the recognition of the appellant as a refugee.

At the same time, the Tribunal stipulated that the ruling does not take a position regarding Eritreans who left the country prior to their recruitment, or those who were drafted and left the country without being caught (unlike the appellant in the case, who was caught after defecting, detained and tortured).⁷⁶ The Ministry of Interior once again appealed the ruling to the District Court, and at the time of writing this report, the appeal is still pending.⁷⁷ Dozens of appeals filed with

⁷⁴ Appeal (Jerusalem) 1010-14 *Masgena vs. Ministry of Interior*. Issued on September 4, 2016.

⁷⁵ Administrative Appeal (Jerusalem) 32641-10-16 *PIBA vs. John Doe* (issued on January 26, 2017).

⁷⁶ Appeal (Jerusalem) 1010-14 *Masgena vs. Ministry of Interior*. Issued on February 15, 2018.

⁷⁷ Administrative Appeal 12154-04-18 *PIBA vs. Masgena*. The appeal was filed on April 9, 2018 and is available in Hebrew: <https://tinyurl.com/ya9q27z3>.

the Appeals Tribunal concerning similar rejections based on the legal opinion of the Ministry of Interior, have been suspended by the Tribunal until a final ruling is issued on the first appeal.⁷⁸

The Ministry of Interior's interpretation of the ruling by the Appeals Tribunal is incredibly narrow. Instead of applying the ruling of the Tribunal that defection from military service may be perceived as an expression of political opinion by the Eritrean regime and examining asylum applications in light of this ruling - at least until a decision is made on the appeal - the Ministry of Interior conducted a review of asylum applications of Eritreans in immigration detention; those with cases similar to the appellant in the ongoing case were to be released. As part of this review, the Ministry of Interior examined whether the asylum-seeker was detained in Eritrea, the duration of detention, the harshness of the punishment, "etc."⁷⁹

In parallel, the Ministry of Interior continues to reject the asylum applications of Eritrean citizens based on the controversial legal opinion, and even has done so in the case of a man released from detention who met the criteria stipulated above, which the Ministry of Interior itself set.⁸⁰ The HRM and the Clinic for Refugee Rights at the Tel Aviv University sent a letter to the Ministry of Interior calling for a halt of this improper practice.⁸¹

Citizens of Sudan

The Ministry of Interior has adopted a different practice toward Sudanese citizens than the one applied to Eritrean nationals. In 2013, shortly after the Ministry of Interior began allowing Sudanese and Eritrean citizens to file asylum applications, it rushed to reject *en masse* the asylum applications of Sudanese citizens who

⁷⁸ For example, the Tribunal's decision from July 31, 2018 on Appeal 4420-18 *Ibreh Berhane vs. the Ministry of Interior*.

⁷⁹ Letter of Adv. Omri Ben Zvi from the Ministry of Justice's Department of Legal Counsel and Legislation dated March 21, 2018. Available in Hebrew: <https://tinyurl.com/y7vq4cdo>.

⁸⁰ This decision was appealed by the HRM. The appeal, 4420-18 *Ibreh Berhane vs. the Ministry of Interior*, is still pending.

⁸¹ A letter authored by the lawyers Elad Kahana, Inbar Barel and Anat Ben Dor from June 24, 2018.

did not originate from active conflict areas such as Darfur, the Nuba Mountains and the Blue Nile region.⁸²

However, with regards to residents of Darfur, the Nuba Mountains and the Blue Nile regions, where the situation is very likely to provide grounds for recognition as refugees, the tactic employed by the Ministry of Interior is to simply avoid making determinations on their asylum applications. Ministry of Interior data provided in February 2018 shows that at the time, 4,746 asylum applications of Sudanese citizens were pending (among them 3,400 applications of Darfur residents and 72 of Nuba Mountain residents).⁸³ The Appeals Tribunal has criticized this practice of the Ministry of Interior which grants, from time to time, legal status based on "humanitarian grounds" to some members of this group to avoid granting a proper refugee status.

To date, the Ministry of Interior has recognized only a single Sudanese citizen as a refugee, and even this only after lengthy proceedings at the District Court and Supreme Court on a petition filed on his behalf by the HRM.⁸⁴ As for all other asylum seekers from Sudan whose applications have not been rejected, the Ministry of Interior continues to refuse to make a determination regarding their applications.

In 2007 and 2008, the Ministry of Interior decided to grant A/5 residency permits (which grant the right to work as well as rights under the National Health Insurance Law and National Insurance Law) to about 600 Darfuris who were residing in Israel at the time. Meanwhile, the rest of the Darfuris in Israel, thousands of them, were granted short-term 2(A)(5) visas and are subject to various policies adopted by Israeli authorities against "infiltrators," including

⁸² See for example the response of the State from March 11, 2014 in HCJ 8425/13 *Gabrieslasi vs. the Knesset*, in which the Ministry of Interior declared that it had made decisions on 505 cases of Sudanese asylum-seekers, all of them negative.

⁸³ A letter of the PIBA officer in charge of implementing the Freedom of Information Act to Adv. Michael Pomerantz and Carmel Pomerantz dated February 28, 2018.

⁸⁴ See, among other proceedings: Administrative Appeal 3325/15 *Ali vs. the Ministry of Interior*; Administrative Appeal 8667/15 *Ali vs. the Ministry of Interior*; Administrative Appeal 2863/14 *Moutasim vs. the Ministry of Interior*.

detention at the Holot facility (no longer being used), deducting a share of their wages for a "deposit," and pressure to leave Israel.

In 2017 it came to light that in 2014, the RSD Unit produced a legal opinion with regards to asylum seekers from Darfur. The legal opinion reviews the situation in the Darfur region and the types of threats to which residents of this region are exposed, and states that in many countries, residents of Darfur who belong to non-Arab tribes are recognized as refugees. The legal opinion states that "the claims arising from these asylum applications are that asylum seekers may, in high likelihood, experience persecution upon return to their country of origin. This persecution will be based on racial background (belonging to an ethnic group), and/or an imputation of a political opinion opposed to the government, in cases when the applicant experienced some interaction (including temporary holding, detention) arrest, etc [sic] with authorities."⁸⁵

In response to media publications that exposed the existence of this legal opinion, PIBA claimed that this is not an opinion recommending the granting of refugee status to any particular person, adding that "there are factual reviews conducted on a regular basis by the Unit and internal reviews written to handle individual cases."⁸⁶ In a hearing conducted later that month at the Knesset's State Control Committee, titled "The Immigration Authority hid from the courts the existence of internal legal opinions with regards to asylum seekers from Africa," the head of PIBA's Enforcement Administration, Yossi Edelstein, claimed that PIBA did not pass the legal opinion on to the Minister of Interior, Aryeh Deri, and that the Minister does not intend to make a decision with regards to asylum seekers from Darfur until the Supreme Court decides whether to approve the forcible deportation of asylum seekers to Uganda and Rwanda, as part of an ongoing legal proceeding at the time.⁸⁷

⁸⁵ RSD Unit, *Legal Opinion on Handling Asylum Applications of Subjects of the Republic of Sudan Who Originate from the Darfur Region*, para 38.

⁸⁶ Yehuda Shohat, *A Report Determined that Darfuri Refugees Deserve Legal Recognition - and the Immigration Authority Ignored*, Yedioth Aharonot, January 3, 2017.

⁸⁷ Protocol no. 195 from the hearing of the State Control Committee, January 23, 2017.

Even after the ruling made in that case seven months later (which determined that there is no legal prohibition against forcibly deporting asylum seekers to a third country willing to receive them, but that the agreement with the third country presented to the Court does not allow for this)⁸⁸ the Minister of Interior has not formulated a policy with regards to asylum seekers from Darfur. The Advisory Committee on Refugees has not deliberated on the applications of asylum seekers from Darfur and has not made determinations regarding them in the four years that have passed since the legal opinion was issued. This despite the fact that in an affidavit filed by the head of PIBA's Enforcement Administration to the Supreme Court back in February 2015, he estimated that the asylum applications filed by citizens of Eritrea and Sudan would be decided on within a year.⁸⁹ Courts have criticized the lengthy delays in responding to asylum applications of Sudanese citizens,⁹⁰ as has the State Comptroller, but to no avail.⁹¹

In the absence of decisions on their asylum applications, some Sudanese asylum seekers initiated court proceedings in which they demanded a response to their asylum applications or be granted a legal status equal to those who have been recognized as refugees (i.e., A/5 residency permits). At first, the tribunals ordered the Ministry of Interior to grant some of these petitioners B1 visas (which grant the right to work legally), until a decision is made on their asylum application. Thus, for example, in November 2016, the Appeals Tribunal ordered the granting of such status to a Darfuri asylum-seeker who filed an application in early 2014 and still had not received a response.⁹²

In June 2017, following additional legal proceedings due to the lengthy delay in

⁸⁸ Administrative Appeal 8101/15 *Elmasged Geriyosos Tsegeta vs. the Minister of Interior* (issued on August 28, 2017).

⁸⁹ The affidavit was filed as part of the legal proceedings surrounding HCJ 8665/14 *Desta vs. the Knesset*.

⁹⁰ See for example Administrative Petition (Beer Sheva) 60469-02-15 *Ali vs. the Minister of Interior* (April 13, 2015).

⁹¹ State Comptroller, Annual Report 68C, p. 1444.

⁹² Appeal (Tel Aviv) 1202-16 A. G. M. vs. *the Ministry of Interior* (issued on November 28, 2016).

making determinations on the asylum applications of residents of Darfur, the Ministry of Interior decided to grant A/5 residency permits "on humanitarian grounds" to 200 Darfuris, without completing the processing of their asylum applications.⁹³ At first, the decision applied only to those who initiated legal proceedings due to the lengthy delay in responding to his or her asylum application, without any criteria. Later, the Ministry of Interior promulgated criteria for granting the permits to residents of Darfur, which included the decision that A/5 residency permits would only be given to residents of Darfur over the age of 45).⁹⁴

Following this, Appeals' Tribunals began ruling on petitions of Darfuri asylum seekers, determining that due to the unreasonable delay in determining their cases, the appellants should be granted A/5 residency permits until a decision on their application is made.⁹⁵ In an appeal filed by residents of the Nuba Mountains, the Tribunal ruled that the delay is unreasonable and ordered the Ministry of Interior to grant the father and son A/5 residency permits.⁹⁶

Meanwhile, in December 2017, the Ministry of Interior announced that it would grant A/5 residency permits to 400 Darfuris whose asylum applications had not received a response. In May 2018, the Ministry of Interior announced that it would grant this status to 300 more asylum seekers, this time not only from Darfur but also those who fled the Blue Nile and Nuba Mountains regions in Sudan. This time as well, the Ministry of Interior set arbitrary criteria for granting this status.

At present, four petitions are pending before the High Court of Justice demanding that the court order the Ministry of Interior to make determinations on the asylum

⁹³ Announcement of the Ministry of Interior in the proceedings surrounding Administrative Appeal (Tel Aviv) 16391-03-17 *Salih vs. PIBA* (June 17, 2017).

⁹⁴ PIBA, *Update Regarding Instructions to Implement the Decision to Grant 200 Darfur Region Exiles*, August 2, 2017. Available online in Hebrew: <https://tinyurl.com/y9kywow5>.

⁹⁵ See for example Appeal (Jerusalem) 2150-16 *John Doe vs. the Ministry of Interior* (November 15, 2017); Appeal (Jerusalem) 4447-17 *John Doe vs. Ministry of Interior* (March 6, 2018); Appeal (Jerusalem) 4574-17 *John Doe vs. Ministry of Interior* (March 7, 2018); Appeal (Jerusalem) 4817-17 *John Doe vs. Ministry of Interior* (May 6, 2018).

⁹⁶ Appeal (Jerusalem) 4455-17 *Kadapour vs. Ministry of Interior* (April 16, 2018).

applications of residents of Darfur, the Blue Nile and Nuba Mountains regions.⁹⁷

Meanwhile, due to the refusal of the Ministry of Interior to make determinations on the asylum applications of Sudanese nationals and because the decisions to grant A/5 residency permits apply to only a few Sudanese asylum seekers, most Sudanese asylum seekers continue to live in a precarious state: on one hand they are not being deported, but on the other, they are denied basic rights. It should be mentioned that the State Comptroller recently determined that the current arrangements applied to this group, including the “non-enforcement” of the prohibition on their employment, does not guarantee minimal dignified living as required by Basic Law: Human Dignity and Liberty.⁹⁸

⁹⁷ HCJ 4630/17 *Tagal vs. the Prime Minister of Israel*; HCJ 7552/17 *Tomer Warsha Attorney's Office vs. the Government of Israel*; HCJ 1031/18 *Moshir vs. the Minister of Interior*; HCJ 7982/17 *Anwar vs. the Minister of Interior*. The Court suspended the handling of the third petition, which focuses on the matter of residents of the Blue Nile and Nuba Mountains, and the fourth petition, until a determination is made on the first two petitions.

⁹⁸ State Comptroller, Annual Report 78C, pp. 158-171.

10. Conclusion and Recommendations

The handling of asylum seekers in Israel requires a fundamental shift in thinking and a realization that although asylum applications are also filed by those who do not meet the conditions set in the Refugee Convention, the underlying purpose of an asylum system is to identify refugees to grant them the protection they deserve, and not just to identify those who are not refugees to advance their deportation proceedings.

- The Ministry of Interior must guarantee that asylum seekers can file asylum applications in dignified conditions, and prevent situations in which a surge in the number of applicants leads to filing asylum applications in undignified conditions, or prevents people from filing asylum applications, exposing people to the possibility of detention and deportation and without the ability to make a living.
- The Ministry of Interior must make the asylum system accessible and prevent an overload by allowing the filing of asylum applications in a number of offices throughout the country.
- The Ministry of Interior must make asylum proceedings accessible by providing information in the languages of the relevant countries of origin, and make any information about changes in policies, or other changes, available in these languages.
- During times of overload on the asylum system, the Ministry of Interior must prevent the emergence of obstacles to accessing the asylum system by allowing the filing of asylum applications through electronic means such as email or fax.
- The Ministry of Interior must ensure access to the asylum system by setting up a mechanism to allow asylum applications to be filed at the Ben Gurion Airport and the other border crossings.

- The State must adopt standards for assessing credibility of asylum seekers in line with the guidelines of the UNHCR. Among other things, assessment of credibility should be conducted while being mindful of the limitations of human memory and translation, without drawing sweeping conclusions based on "inconsistencies" related to inconsequential details in the asylum application.
- The RSD Unit must publish the general documents it authors related to conditions in certain countries, based on which it examines asylum applications.
- The RSD Unit should directly employ the translators used in asylum interviews.
- Only translators who have undergone training in translation in general, and translation of asylum proceedings in particular, should be employed. Such training should include information on gender sensitivity and working with vulnerable populations.
- All interviews must be conducted in the languages that the asylum-seeker has declared to be able to speak. Interviews should not be conducted through interpreters in languages of which asylum seekers have only partial command. Under no circumstances should the handling of an asylum application be conditioned on asylum seekers providing a translator by themselves or at their own expense.
- The Ministry of Interior must re-open the asylum applications of all Eritrean citizens that have been rejected, and make determinations on them in line with the criteria set forth in the Refugee Convention. This includes recognizing, under certain circumstances, persecution due to leaving the country, defecting from the military or avoiding service, as persecution based on imputed political opinion.
- The Ministry of Interior must make determinations on the asylum applications of Sudanese citizens in accordance with the standards set forth in the Refugee Convention.