

## ISRAEL

Israel is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights, but not to its First or Second Optional Protocols. In 2001, 390 new applications were submitted for asylum in Israel. Out of all applications pending a decision, including some earlier cases, 27 asylum seekers were granted refugee status, 81 were given temporary status, and 6 were resettled in other countries. 83 applications were rejected.

Asylum seekers are not as a rule detained in Israel unless they hail from an “enemy or hostile” country. Even though Israel is a signatory to the 1951 Convention and the 1967 Protocol, it has not yet enacted any legislation to directly address asylum seekers. The UNHCR in Israel had been mainly responsible for dealing with asylum seekers up until the beginning of the year 2001 when the Ministry of Interior approved an internal procedure. Under the new procedure, the UNHCR still handles initial applications for asylum. It interviews applicants and has the power to confer asylum-seeking status. A National Status Granting Body (NSGB), which began operating irregularly at the start of 2002, confers refugee status. Administrative rules and regulations, rather than national legislation, therefore dictate the treatment of asylum seekers.<sup>1</sup>

An amended Entry Into Israel Law 1952, which stipulates the terms and procedures for the detention of those who have entered into or are staying in Israel illegally, also went into effect on November 8, 2001. According to the revised law, undocumented foreigners may be detained only after the issuance of an appropriate order from immigration authorities and after the detainee has had the opportunity to state his/her claims before the issuing authority. In those cases where a hearing cannot be conducted before the issuance of the order, a hearing must be held no more than 24 hours from the beginning of detention. Where a detention order has been issued, the undocumented foreigner is informed of his rights including his right to notify, should s/he wish to do so, someone close, a lawyer and his/her Embassy or Consulate. Although an undocumented foreigner may be released if it is later discovered that his/her status was determined erroneously, immigration authorities may refuse to release from detention those who are considered to present a danger to national security and public security or health.<sup>2</sup>

While there is no official policy of detention of asylum seekers, undocumented foreigners are regularly detained and held in one of two facilities for deportees. Problems arise when asylum seekers, who often are not aware of the internal procedure because the

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<sup>1</sup> E-mail from Anat Ben-Dor, Public Interest Law Resource Center, Tel Aviv University, to Zeina Mobassaleh, Lawyers Committee for Human Rights, (July 31, 2002 and Aug. 7, 2002) (on file with LCHR) [hereinafter Resource Center Correspondence].

<sup>2</sup> Fax from Tuvia Israeli, Deputy Permanent Representative of the Permanent Mission of Foreign Affairs and of Israel to the United Nations Office in Geneva, Response to LCHR Questionnaire on Detention of Asylum Seekers (Jan. 10, 2002) (on file with Debevoise & Plimpton) [hereinafter Israeli Response to LCHR Questionnaire].

Ministry of Interior does not publicize it, are detected before they apply to the UNHCR for status and are detained for being an undocumented foreigner. According to the Public Interest Law Resource Center at Tel Aviv University, the UNHCR does not believe the lack of publicity to be a problem as the agency believes that word of mouth suffices as a substitute.

If an asylum seeker is detained, he/she can still apply for asylum to the UNHCR from the detention facility but will have to wait in detention until the NSGB, who is supposed to give such cases priority, makes its final decision. Although statistics based on the new procedure have not been compiled, advocates point out that refugee status took some two years before the new procedure was implemented in 2002.<sup>3</sup>

An undocumented foreigner seeking asylum may be detained even after he/she has applied to the UNHCR because the asylum seeker may still have not received documentation proving asylum-seeking status. Such documentation from the UNHCR, meant to deter detention, is not normally issued before the process is concluded some three months from initial application. If the asylum seeker happens to be detained in the three-month interim, the UN agency will intervene and attempt to facilitate release.<sup>4</sup>

If an asylum seeker is detained even after the UNHCR has conferred status, the detention will normally last only a few days, as the agency will intervene and lobby for release.<sup>5</sup>

Most asylum seekers escape detention, mainly because the two detention facilities for deportees, that hold up to three hundred detainees, are normally filled to capacity.<sup>6</sup> Oftentimes detained illegal residents' passports are retained illegally by their Israeli employers thus slowing down the deportation process and keeping detention facilities full. The Hotline for Migrant Workers in Tel Aviv estimates that only about ten asylum seekers are detained each year. As of August of 2002, there were only eight in prison.<sup>7</sup> Most detainees reported that they were made aware of the internal process only after social workers met with them. Advocates fear that numbers of detained asylum seekers will rise as a result of Israel's Prime Minister's recently-announced intention to expand detention facilities so as to facilitate the deportation of 50,000 illegal residents over the next year.<sup>8</sup>

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<sup>3</sup> Resource Center Correspondence, *supra* note 1.

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup> E-mail from Sigal Rozen, Hotline for Migrant Workers, to Zeina Mobassaleh, Lawyers Committee for Human Rights, (July 31, 2002) (on file with LCHR) [hereinafter Hotline Correspondence]

<sup>7</sup> Hotline Correspondence, *supra* note 6.

<sup>8</sup>*Id.*

Israeli authorities reportedly ignore asylum-seeking status if the asylum seeker originates from a “hostile or enemy” country, as nationals of such nations are as a rule detained.<sup>9</sup> The 1954 Law for the Prevention of Infiltration subjects any enemy national who knowingly and unlawfully enters Israel to five years’ imprisonment. Authorities do not always bring charges under this law, but detain such nationals based on security concerns. Asylum seekers who fall under this category can thus be detained for years at times. The UNHCR sometimes succeeds in resettling enemy nationals who are not considered to pose a security threat in another country. Israel will generally not grant them asylum and will release them only under restrictive conditions.<sup>10</sup>

*Is there independent review of the detention decision?* No

According to the newly amended Entry Into Israel Law 1952, there is a quasi-judicial Reviewing Authority that is supposed to review Ministry of Interior detention decisions no more than fourteen days following detention. Detainees may also petition the tribunal at any time and may request a reconsideration of their case if there has been a change in their circumstances. Further, any person may petition the High Court of Justice to review any governmental authority decision. An undocumented foreigner who has been detained may therefore submit a petition with regard to either the initial decision by the immigration authorities to detain, or with regard to the decision of the tribunal.<sup>11</sup>

The Hotline for Migrant Workers, however, has documented extreme violations of these stipulations. According to its director, six percent of males remain in jail for more than thirteen days.<sup>12</sup> Women, on average, according to the survey, remain detained for more than 15 days.<sup>13</sup> Furthermore, while a detainee has the right to petition for additional review of their detention, most detainees are not aware of this option rendering the right to appeal ineffective. Many who are aware of the option are deterred by the fact that they are responsible for all fees incurred during this process.<sup>14</sup>

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<sup>9</sup> Resource Center Correspondence, *supra* note 1.

<sup>10</sup> *Id.*

<sup>11</sup> Israeli Response to LCHR Questionnaire, *supra* note 2 .

<sup>12</sup> Based on a Hotline report surveying 270 male detainees, or thirteen percent of male detainees arrested, between November 8, 2001 (when the 1952 Entry into Israel Law went into effect) and April 8, 2002.

<sup>13</sup> Based on a Hotline report surveying 72 detained women, or thirty percent of female detainees arrested, between November 8, 2001 and April 15, 2002.

<sup>14</sup> Resource Center Correspondence, *supra* note 1.

Advocates also criticize the law, for providing an undocumented foreigner less safeguards against illegal detention than a detained criminal is provided. While the Entry Into Israel Law requires reviews within fourteen days of detention, the 1996 Criminal Procedure Law requires a detainee to be brought before a judge within twenty-four hours from initial detention, and within forty-eight hours in exceptional cases.

The independence of the Reviewing Authority has also been questioned, as it is comprised of two judges who are commissioned by the Ministry of Interior. The Ministry appoints them and pays for their salaries.<sup>15</sup> When one of the two lawyers serving on the body went on vacation, a Ministry legal advisor simply filled the position.<sup>16</sup> The body has also not yet overturned a Ministry decision since it was formed in November of 2001.<sup>17</sup>

Members of leading civil rights organizations have petitioned the government to call this practice unconstitutional. The petition points to many problems regarding the reviewing authority and claims that an administrative authority should not have the power to restrict one's basic right to freedom.<sup>18</sup>

*Are there limits on the period of detention?* No

Some will remain in prison for months or even years. The fact that a detainee has been in prison for 60 days can be used a basis of release on bail.<sup>19</sup>

*Is there periodic review of detention?* No

The amended Entry into Israel Law stipulates that the Reviewing Authority may decide to review its decision to detain again, as long as the second review is scheduled for no more than thirty days later. This second review, however, is not an obligatory measure. Detainees may also petition for further review by both Reviewing Authority as well as the High Court of Justice, but as mentioned earlier, it has been reported that most are not made aware of this option.<sup>20</sup>

*Is there access to government-funded legal aid?* No

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<sup>15</sup> Hotline Correspondence, *supra* note 6.

<sup>16</sup> Resource Center Correspondence, *supra* note 1.

<sup>17</sup> Hotline Correspondence, *supra* note 6.

<sup>18</sup> Resource Center Correspondence, *supra* note 1.

<sup>19</sup>*Id.*

<sup>20</sup>*Id.*

A detained asylum seeker will have access to a government-funded Public Defender only if he/she is facing criminal charges as well. Legal aid bureaus also do not normally represent people in administrative detention procedures, according to the Entry to Israel Law. Theoretically, the bureau may step in, however, if a person has a legal claim to stay in Israel. Possibility of pro-bono representation by non-governmental organizations or private lawyers is also very limited.<sup>21</sup>

*Alternatives to detention:* None.

According to the Entry into Israel Law, alternatives to detention of illegal residents are to be sought only in exceptional circumstances. Tel Aviv University's Public Interest Law Resource Center points out that this law stands in sharp contrast to Israel's regular Detention Law which requires that detention be used only when there are no other alternatives.<sup>22</sup>

*Vulnerable groups:*

Women are separated into a separate facility for the detention of illegal residents. They, however, tend to wait longer than men before they are brought before the Reviewing Authority.<sup>23</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Hotline Correspondence, *supra* note 6.