

הפורום לזכויות פליטים
المنتدى لحقوق اللاجئين
Refugees' Rights Forum



**Principles for Protecting the Rights
of Asylum Seekers and Refugees**

June 2008

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February, 2008

Principles for Protecting the Rights of Refugees and Asylum Seekers

Refugees and asylum seekers in Israel* will be protected in accordance with the following basic principles:

1. The protection of refugees and asylum seekers in Israel will be based, first and foremost, on recognition of the value of the human being, the sanctity of human life, and the principle that all persons are free.
2. The State of Israel will absorb refugees as an expression of its membership of the family of enlightened nations and its recognition of the historical lesson underlying the Convention, and in light of the values of democracy and human rights.
3. The State of Israel will not deport or expatriate any person to a place in which they can be expected to face danger to their life, person, or liberty. A person facing such danger shall be entitled to protection enabling adequate and dignified existence.
4. Where there are substantiated grounds to fear that a person will be persecuted due to their race, religion, nationality, political beliefs, or affiliation to a particular social group, that person is a refugee entitled to protection.

The State of Israel will grant a safe haven and status to persecuted and uprooted persons in accordance with the international undertakings it assumed on joining the 1951 Convention Relating to the Status of Refugees (hereinafter: “the Refugees Convention”) and the other international human rights conventions to which Israel is party.

* In this document, “refugees” refers to persons recognized as refugees in accordance with the 1951 Convention Relating to the Status of Refugees; “asylum seekers” are persons who requested protection in accordance with the Convention but whose application has not yet been determined.

5. The State of Israel must establish an accessible, fair, and efficient asylum system.
6. The State of Israel must ensure that the principle of equality is maintained among asylum seekers throughout the proceedings for clarifying the asylum application.
7. The State of Israel must refrain from detaining asylum seekers.
8. The State of Israel must ensure that the rights of minor asylum seekers are maintained, including their right to life, to development, to identity, and their right not to be separated from their parents.

In any decision relating to children, the good of the child will be a supreme consideration.

9. The State of Israel must ensure the right of asylum seekers and refugees to an adequate and dignified existence. Within this, rights to work, housing, welfare, health, and education must be ensured.
10. The State of Israel must protect the right of refugees and their families to family life.
11. The State of Israel must act to integrate refugees in Israeli society and to enable them, after a period of time to be determined, to acquire permanent status in Israel.

Explanatory Comments on the Guiding Principles

Section 1

The wording of section 1 is drawn from Article 1 of the Basic Law: Human Dignity and Liberty. It should be noted that Article 1 of the Basic Law applies to all persons per se and thus already applies to an asylum seeker or refugee present in Israel. Nevertheless, we felt it was important to emphasize these values, since they also form the underlying justification for the Refugees Convention.

Section 2

This section seeks to express Israel's profound commitment to protecting refugees and asylum seekers. Most of the nations of the world (147) are now members of the Refugees Convention, or of the 1967 Refugees Protocol. From the outset the State of Israel and numerous Jewish organizations attached importance to participating in drafting the Convention, which was introduced in part against the background of the Holocaust of European Jewry. Israel continues to be a member of the Convention institutions. It should also be noted that the right to seek asylum was recognized as a fundamental right in the 1948 Universal Declaration of Human Rights.

Section 3

This aim of this section is to manifest the principle of “non-refoulement” (the prohibition against deportation or repatriation), which forms the cornerstone of the Refugees Convention. Non-refoulement has become an accepted part of international custom law, and thus binds countries even if they have not signed the Refugees Convention or the Protocol. In the case of *Al-Tai'i*, then Supreme Court President Aharon Barak determined that this principle forms part of domestic Israeli law and binds any authority in exercising its powers (HCJ 4702/94, published in *Piskei Din* 49(3) at p. 843). It should be noted that this principle was also integrated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Israel is party.

The latter part of this section reflects the important principle that protection is not confined to the prohibition against deportation or repatriation to a place of danger, but also includes the obligation to meet the individual's existential needs.

The refugee's right to protection is mirrored by the obligation incumbent on the state to provide asylum. This section also notes other human rights conventions that relate mainly to the manner and scope of the rights to which refugees and asylum seekers in Israel are entitled. These include the 1966 Convention Regarding Civil and Political Rights; the 1966 Convention Regarding Social, Economic and Cultural Rights; the Convention Relating to the Status of Refugees, as mentioned above; the 1956 Convention on the Elimination of All Forms of Racial Discrimination; the 1989 Convention on the Rights of the Child; the 1979 Convention Regarding the Elimination of All Forms of Discrimination against Women; and other conventions.

Section 4

This section adopts the definition of the term “refugee” as used in the 1951 Refugees Convention. According to the Convention, this definition constitutes a minimum definition from which the state is not entitled to derogate (the state is entitled, of course, to extend the definition of “refugee” to include additional persons). Over the years the definition has been interpreted by the UN Commissioner for Refugees and by the supreme courts of various countries. Today, for

example, women who are persecuted due to their gender or persons persecuted for their sexual orientation or gender identity are customarily regarded as “members of a specific social group” for the purpose of the Convention.

Similarly, many countries have established that the persecution involved need not necessarily be at the hands of the authorities of the state or on their behalf. If the state is unable or unwilling to provide a persecuted person with protection against the actions of non-state elements, this may constitute “persecution” as defined by the Convention.

Section 5

According to refugee law, a person who meets the definition established in the Refugees Convention is a refugee. The declaration by the state that a given person is a “refugee” thus constitutes recognition of a given factual situation. However, the process of recognition of asylum seekers as refugees must constitute the starting point for the granting of protection by the state, or for the decision not to grant such protection. This is a fateful decision for the asylum seeker since its outcomes may be disastrous (repatriation to a place in which the individual faces mortal danger) and irreversible. Membership of the Refugees Convention requires the establishment of a mechanism for recognizing refugees. To date the State of Israel has not established an independent mechanism to examine applications submitted in this field; it relies largely on the services of the UN Commission for Refugees.

The significant increase in the number of applications for asylum submitted in Israel leads to the unavoidable conclusion that Israel must establish the necessary bureaucratic mechanism to diagnose refugees. This system must be accessible to *all persons* since, as already noted, the right to request asylum is a basic human right.

The asylum system in Israel must observe all the rules of administrative behavior, including: Recognizing the applicants’ right of representation; providing asylum seekers with interpreters; providing clear and detailed explanations of the procedure; ensuring that the persons making the decision are trained to do so; to ensure that every asylum seekers enjoys the right of hearing, including the right to respond to claims or reservations regarding the application; to furnish every asylum seekers with the minutes of their testimony, as well as other information providing the foundation for the decision in their case; to provide detailed grounds for a decision rejecting the application for asylum; to grant the right of appeal to an independent tribunal, etc.

Both the state and the asylum seeker have an interest in the efficiency of the system, so that asylum seekers will not be obliged to wait for the decision on their fate beyond the period of time required for the maintenance of fair procedures.

Section 6

The right to equality is one of the basic values of the Israeli legal system, and applies to the authorities in the context of the procedures for processing applications for asylum and in granting protection to refugees and asylum seekers. It should be noted that the Refugees Convention prohibits discrimination between asylum seekers on the grounds of race, religion, or country of origin (Article 3 of the Convention).

Section 7

Asylum seekers are often forced to cross international borders without permits when fleeing from their own country. The Refugees Convention recognizes this reality and establishes (in Article 31) that, under certain conditions, sanctions are not taken against asylum seekers on account of unlawful entry. The UN Commission for Refugees, the authorized interpreter of the Refugees Convention, has stated its opinion that the detention of asylum seekers is *inherently* undesirable.

In Israel, the detention of refugees and asylum seekers appears to have become the default course of action. More seriously still, the detention of large numbers of asylum seekers is used to deter other potential asylum seekers likely to come to Israel. The use of detention as a deterrence in this manner is contrary to Israeli law (see the Al-Tai'i case mentioned above). The starting point regarding the detention of asylum seekers should be the opposite: In view of the basic right to liberty and the right to seek asylum, asylum seekers should be detained only in exceptional cases of *need*. Consideration must first be given to alternatives to detention. The UN Commission for Refugees has determined that detention of asylum seekers may be justified only in the following conditions:

1. When the identity of the applicant is unknown or disputed.
2. For the purpose of an initial interview to clarify the grounds for asylum (this exception does not permit detention for the entire duration of the examination of the asylum application);
3. When the asylum seekers have destroyed their travel documents or have presented false documents with the *intention* of deceiving the authorities examining the request for asylum with regard to their identity;
4. In order to protect public safety and order, when an asylum seeker is proven to have a criminal record or connections liable to present a danger.

In those exceptional cases in which the state detains asylum seekers, it must do so in accordance with the law and for the minimum period required.

The state must strictly adhere to the rules formulated for this purpose by the UN Commission for Refugees (including, for example, the prohibition against holding asylum seekers together with criminal detainees or prisoners; the diagnosis of asylum seekers suffering from trauma, and so forth).

Minor asylum seekers are not to be detained.

Section 8

Children must be recognized as a vulnerable population with special needs to which Israel must be sensitive during asylum proceedings. Children capable of expressing their opinion must enjoy the right to state their opinion freely on any matter relating to them. Proper weight must be given to their opinions according to their age and level of maturity.

All the principles noted in this section are drawn from the Convention on the Rights of the Child, to which Israel is party (Articles 3, 6, 7, 8, 9, and 12).

The child's right to appropriate housing and to education should be added to the rights included in this principle.

Section 9

This principle is based mainly on the International Covenant on Economic, Social and Cultural Rights, which defines such rights as the right to work, the right to welfare, the right to an adequate standard of living (including the right to housing), the right to health, and the right to education by way of basic rights (Articles 6, 9, 11, 12, and 13). It is worth noting that the Basic Law: Human Dignity and Liberty has also been interpreted in case law as guaranteeing these rights, at least at their basic level. The purpose of the principle is to avoid situations that have regrettably become common in Israel in which asylum seekers are left on the street without shelter or food and without any possibility of supporting themselves.

Section 10

International law and domestic Israeli law both recognize the family as a natural and fundamental unit in society worthy of the state's protection. Rights granted to refugees should also be granted to their families. Refugees and asylum seekers are often separated from their families during their flight to freedom. The State of Israel should recognize the importance of the family unit and enable such refugees to be reunited with their close relatives in Israel. The State of Israel should protect the family units established by refugees and asylum seekers during their stay in Israel. The importance of the family should also guide the authorities in their attention to unaccompanied minors (in terms of the need to find guardians or, in appropriate cases, to arrange adoption).

Section 11

Article 34 of the Refugees Convention instructs member states to do everything possible to facilitate the integration and naturalization of refugees within society. This principle recognizes the trauma that is inherent in refugee status and seeks to ensure that refugees who have found a safe haven will not be obliged to uproot themselves after several years and to cope once again with the difficulties of moving and settling in a new place. Accordingly, a course should be delineated at the end of which refugees can acquire permanent status.

The "Refugees' Rights Forum" consists of the eight Human Rights Organizations active in promoting the rights of refugees and asylum seekers in Israel, as well as implementing activities on their behalf. The aim of the group is to work together to find strategies for dealing with changing realities on the ground and on the governmental level. The Forum was established with the assistance of the *New Israel Fund* in order to develop in-depth policy papers which relate to all aspects of refugee protection and rights, including long terms solutions. The Forum's objective is to achieve legislation which addresses the legal and moral obligations that Israel has committed to by signing the International Refugees Convention. These obligations are based on the values of democracy and human rights.

The Association for Civil Rights in Israel (ACRI) is Israel's oldest and largest human rights organization, and is dedicated to protect the entire spectrum of human rights of all people in Israel, the occupied territories, and all places that human rights are violated by the Israeli authorities. ACRI advances human rights through a wide range of legal, public outreach and educational activities.

The Hotline for Migrant Workers is a non governmental, not for profit association, dedicated to protecting the rights of migrant workers and refugees and eliminating human trafficking in Israel. Our activities include providing information, offering consultation services and legal representation, heightening public awareness, and promoting public policy that eliminates modern slavery in Israel.

Physicians for Human Rights-Israel (PHR-IL), established in 1988, is committed to ensuring human rights, and the right to health in particular, for all individuals living in Israel and the Occupied Palestinian Territories. PHR-Israel promotes the equal right to health through advocacy work, legal action, lobby work, awareness raising and publications. In addition PHR-Israel provides medical aid through volunteer clinics.

The Refugee Right Clinic is a legal aid and advocacy program devoted solely to refugees. Situated at the Tel Aviv University Buchmann faculty of Law, the Clinic is devoted to the teaching, researching and practicing of refugee law. Operating since October 2003, the Clinic provides free legal aid to dozens of asylum seekers and refugees every year in a variety of issues. In addition, the Clinic advocates the implementation of a fair asylum policy in Israel.

Amnesty International is an international organization aimed at preventing human rights abuses. ***Amnesty Israel*** is active in ensuring the rights of asylum seekers and refugees in Israel by campaigning on the public, parliamentary and governmental levels. The organization works to educate the public and decision makers in Israel in order to make them stand up to their obligations.

ASSAF – Aid Organization for refugees and asylum seekers was founded in the beginning of 2007 in order to fill a gap in psychosocial assistance to refugees and asylum seekers in Israel. ASSAF provides emergency humanitarian assistance, psychosocial assistance and community empowerment.

The African Refugee Development Center (ARDC) founded in 2004, is a registered non-profit organization established to assist, support and empower the African refugees and asylum seekers in Israel and to promote a humane and fair Israeli asylum policy. ***ARDC*** represents refugee communities from close to ten countries from East, Central and West Africa. ***ARDC*** divides its work between humanitarian and direct service provision, individual casework, advocacy and work to enhance community building among refugees.

Kav LaOved (Worker's Hotline) is a nonprofit non governmental organization committed to protecting the rights of disadvantaged workers employed in Israel and by Israelis in the Occupied Territories, including Palestinians, migrant workers, subcontracted workers and new immigrants. Kav LaOved is committed to principles of democracy, equality and international law concerning human and social rights.