



The Jacob Blaustein Institute  
for the Advancement of Human Rights

## **Background: African Asylum Seekers and Migrants in Israel**

### **June 13, 2012**

#### **Overview and Summary**

Israel's international law obligations towards refugees and asylum seekers have come under close scrutiny in recent months in relation to Israel's plans to deport some 60,000 African migrants and asylum seekers. In addition, a related wave of violence and xenophobic statements directed against this group has been widely condemned by President Shimon Peres, Israel's Ministry of Foreign Affairs, Prime Minister Netanyahu, Israeli and American civil society organizations, and others.

This background note summarizes the recent events; outlines Israel's international obligations with regard to asylum seekers and refugees; and cites legal concerns and possible responses to them, including proposals regarding Israel's development of an effective asylum system, which could enable the government to distinguish between refugees, who have a right to be protected from deportation to their home country, and economic migrants, who are not so entitled. The note explains, *inter alia*, that asylum seekers and refugees do not need to be provided citizenship or permanent residency in Israel, but rather may be provided temporary refuge until conditions change in their country of origin such that they no longer have a well-founded fear of persecution upon return. According to the analysis presented, an effective asylum system, including a fair and impartial Refugee Status Determination (RSD) procedure, could also provide Israel with a capacity to negotiate agreements with third countries so that refugees can be permanently resettled in those countries.

#### **The Problem:**

##### ***Round-up of African Migrants and Asylum Seekers***

On June 10, 2012, Israel's Immigration Police started to round-up and detain South Sudanese migrants and asylum seekers primarily in Eilat and Tel Aviv. According to news reports, the individuals are being transported to police stations and immigration detention centers where they are asked to sign documents stating they agree to leave Israel "voluntarily" and return to South Sudan. Approximately 300 individuals have reportedly signed the "voluntary" return document as of June 13. News reports further indicate that these persons are told that if they do not sign the "voluntary" return document, they will not be allowed to collect their belongings and will remain in custody. It is not known at this time whether the detained South Sudanese citizens are being informed of their right to apply for asylum prior to signing the "voluntary" return document or deportation. This round-up and detention procedure raises serious questions about the voluntary nature of the decision of South Sudanese citizens to return to their country of origin, and Israel's compliance with its international law obligations as a party to the 1951 Refugee Convention and 1967 Protocol thereto.

On June 7, 2012, Prime Minister Netanyahu's office issued a press release outlining a National Emergency Plan to Remove "Infiltrators" (referring primarily to African migrants and asylum seekers), including (1) the completion of a border fence between Israel and Egypt as quickly as possible, (2) building detention facilities with thousands of units, (3) moving undocumented migrants directly from the border to the detention facilities, (4) punishing employers who illegally employ undocumented migrants, thereby ending the government of Israel's prior informal policy "allowing" African migrants and asylum seekers to work in Israel.

### ***Number of Migrants and Asylum Seekers***

Israel's round-up, detention and planned deportation of South Sudanese migrants and asylum seekers, referred to as "Operation Return Home," follows the June 7, 2012 decision of the Jerusalem Administration Court to revoke Temporary Group Protection for citizens of South Sudan, a status that protected them from deportation, but did not allow them to apply for asylum in Israel. The number of South Sudanese migrants and asylum seekers in Israel is estimated to be between 700 and 2,500 individuals. As of May 2012, the larger African migrant and asylum seeker population reportedly amounts to some 60,000 individuals, with about 2,000 new arrivals each month. Approximately 85% of this population is from Eritrea and Sudan (about 34,000 Eritreans and 15,700 Sudanese, including South Sudanese). The remaining 15% are mostly from other African countries. It is important to note that there are approximately 110,000 additional unauthorized *non-African* migrants in Israel, comprised of tourists and migrant workers who entered Israel legally but have "overstayed" their visas.

Several Israeli government officials have expressed intentions to revoke the Temporary Group Protection status of and then deport not only South Sudanese citizens, but all African migrants and asylum seekers, including citizens of Sudan and Eritrea.

### ***Concerns Raised***

Israel has worked hard to bolster its image in the international community as a democratic and law-abiding state, and has placed great importance on compliance with its international obligations. However, Israel's current actions have the potential to significantly damage Israel's international image and relationships in the international community, particularly among African countries where Israel has worked hard to develop relationships by sharing its technical expertise through humanitarian projects and other programs. Moreover, Israel's actions may cause individuals deported to South Sudan to suffer grievous harm upon their return, and violate its obligations as a party to the 1951 Refugee Convention and 1967 Protocol thereto.

"Operation Return Home" follows and is closely linked with a wave of violence and inflammatory racially-charged statements targeting African migrants and asylum seekers in Israel that started in April 2012. On May 23 and 30, 2012, there were protests in south Tel Aviv calling for the deportation of African migrants and asylum seekers, and some protesters engaged in violent acts against Africans. During and after these incidents, several members of the Israeli government made inflammatory statements about the African migrants and asylum seekers in Israel. Subsequently, this population has been targeted in several attacks, including the firebombing of an apartment in Jerusalem. At least 11 Israeli youths have been indicted for assaults on Sudanese and Eritrean migrants separate and apart from the protests. Earlier, in April 2012, four firebombs ("Molotov cocktails") were thrown at apartments of Africans in the Shapira neighborhood of south Tel Aviv. One of them hit a daycare center for children of migrants; no one was injured but property was damaged. This recent wave of abusive rhetoric and violence appears to have been triggered by reports of an alleged rape of a 15 year old Israeli girl by African migrants in south Tel Aviv. Nonprofit organizations that provide humanitarian and advocacy assistance to African migrants and asylum seekers have also been harassed.

Israel's Interior Minister Eli Yishai (Shas) has repeatedly called for (1) a round-up and expulsion of South Sudanese migrants and asylum seekers, (2) the imposition of harsh penalties on those who employ African migrants and asylum seekers, and (3) expulsion of all migrant workers regardless of their consent, including migrants and asylum seekers from Eritrea and Sudan who are currently afforded Temporary Group Protection status. The government of Israel has already started to implement these policies. In a June 12, 2012 editorial in Israel Hayom, Minister Yishai repeated his call for the deportation of these Africans.

"The next phase will be to deport infiltrators from Eritrea and Sudan, who number nearly 50,000 . . . I will not accept no for an answer. A 'no' would mean the end of our Declaration of Independence, the end of the Zionist dream. There are some 300 million people in our region, and if only a quarter of them come here, we will be in trouble. That is why there is no such thing as 'impossible.' We have to deport all of them," said Interior Minister Yishai.

Prime Minister Netanyahu, President Shimon Peres and Israel's Ministry of Foreign Affairs each issued statements condemning the violence perpetrated against African migrants and asylum seekers during the riots in Tel Aviv or the firebombing of the apartment in Jerusalem. President Peres issued a particularly strong statement condemning the hatred of foreigners as a violation of core principles of Judaism. Furthermore, Israeli police helped contain the violence during the riots in Tel Aviv. Israel's Foreign Minister Avigdor Lieberman also criticized Interior Minister Yishai pointing out that Yishai's statements impede the Foreign Ministry's efforts to reach agreements on returns with home countries of African migrants.

### ***Response of Foreign Organizations***

Several American Jewish organizations have issued public statements condemning the violent riots in Tel Aviv, criticizing xenophobic statements of Israeli government officials, and commending the statements of Prime Minister Netanyahu, President Peres and Israel's Ministry of Foreign Affairs that denounced the violent riots. However, they have not issued statements urging Israel to comply with its international law obligations toward asylum seekers and refugees from South Sudan and others who face imminent deportation, as well as towards the larger African migrant and asylum seeker population from Eritrea, Sudan and other African countries who remain in Israel.

The Office of the UN High Commissioner for Human Rights expressed its alarm on June 12 at the incidents of violence and targeted attacks against African migrants in Israel, welcomed the statement of Israeli Ministry of Foreign Affairs condemning the violence, and stressed that under international law all migrants, regardless of their legal status, are entitled to protection of their fundamental rights, including protection from violence and hate speech. Additionally, the office of the UN High Commissioner for Refugees (UNHCR) in Israel raised questions about the proposed practice of detaining migrants, and Voice of America reported that Human Rights Watch and other rights groups have condemned the round-up.

### ***Development of Israel's Asylum System and Arrival of African Asylum Seekers and Migrants***

Until 2005, a few hundred African migrants and asylum seekers would arrive in Israel each year. The number of arrivals started to increase at an exponential rate in 2006 causing an unexpected and growing crisis. As of May 2012, there were reportedly approximately 60,000 African migrants and asylum seekers in Israel. Almost all of these Africans are smuggled into Israel through the Sinai border by Bedouin traffickers. Israel's Prevention of Infiltration Law of 1954, as amended in 2012, classifies these individuals as "infiltrators," defined as "anyone who is not a resident . . . , who entered Israel not via one of the recognized border stations." The term does not address the individual's reason for entering Israel and therefore does not distinguish between economic migrants, refugees and individuals with criminal or terroristic intent.

Initially, asylum applications were submitted to and reviewed by UNHCR in Israel. In July 2009, Israel's Ministry of Interior assumed responsibility for receiving asylum applications and conducting Refugee Status Determinations. Unfortunately, the acceptance rate of asylum claims in Israel has been less than 1%, the lowest rate of any country in the developed world. According to UNHCR and the U.S. Department of State's 2011 Country Report on Human Rights Practices for Israel, 4,603 new asylum applications were submitted to Israel's Ministry of Interior in 2011, and only one application was approved, while 3,692 applications were rejected. In addition, 6,412 previous applications remained pending at the end of 2011. The backlog of asylum applications is due in part to high rates of attrition among staff of the Ministry of Interior who conduct Refugee Status Determinations; there are currently fewer than 10 such staff.

### ***Relevant International Legal Standards***

Israel was active in the drafting of the 1951 UN Refugee Convention and was among the early signers of the 1967 Protocol thereto. Under international law, a refugee is an individual who, due to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion, or membership in a particular social group, was compelled to leave the country of his/her origin and is unwilling or unable to return to it due to this fear. An asylum seeker is someone who is applying for refugee status but does not yet have an official determination that he or she meets the criteria to be determined and designated a refugee. Until a competent adjudicator determines

otherwise, asylum seekers should be considered refugees under the 1951 Refugee Convention and be protected from involuntary return to their country of origin.

Israel's international law obligations with regard to refugees include:

- A prohibition on involuntarily returning refugees to a country where:
  - s/he has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion, or membership in a particular social group; or
  - his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of particular social group or political opinion, often referred to as protection from *refoulement*;
- A requirement to provide access to fair and humane asylum procedures for all asylum seekers. This includes conducting individual, thorough, and impartial Refugee Status Determinations for the South Sudanese citizens prior to deportation; informing citizens of South Sudan of their right to submit asylum applications; and providing a meaningful opportunity to submit asylum applications prior to deportation or “voluntary” repatriation.
- A requirement to guarantee procedural safeguards through all stages of this Refugee Status Determination process, including the involvement of appropriate interpreters and an independent appeal process.
- A prohibition on penalizing refugees for illegally entering or being present in Israel, an obligation that may be violated by Israel's Prevention of Infiltration Law of 1954, as amended in 2012.
- A prohibition on returning individuals, regardless of refugee status, to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture (Convention Against Torture, Article 3).

Asylum seekers and refugees do not need to be provided citizenship or permanent residency in Israel, but rather may be provided temporary refuge until conditions change in their country of origin such that they no longer have a well-founded fear of persecution upon return, or Israel can negotiate agreements with third countries for refugees to permanently resettle in those countries. However, most third countries will not negotiate such third country resettlement agreements if Israel does not comply with its international law obligations.

### ***Imminent Deportation of South Sudanese Migrants and Asylum Seekers***

Following initiatives put forth by the Ministry of Interior to terminate Temporary Group Protection (TGP) for South Sudanese citizens and to deport these individuals, the Jerusalem Administrative Court decided on June 7, 2012 to support the termination of TGP, but stipulated that individuals from South Sudan may submit individual asylum applications.

Prior to the June 7 court decision, Israel's Ministry of Interior had announced in January 2012, that Temporary Group Protection would be terminated at the end of March and that those electing to voluntarily return to South Sudan prior to that date would receive one thousand Euros from the government of Israel. Very few responded to this offer. Prior to this announcement, approximately 900 hundred Sudanese citizens had voluntarily returned from Israel to South Sudan between 2009 and 2011.

On March 5, 2012 the Refugee Rights Clinic on behalf of six Israeli NGOs<sup>1</sup> and Dr. Irit Back, a Research Fellow at the Moshe Dayan Center for Middle Eastern and African Studies of Tel Aviv University, called on the Ministry of Interior to delay the deportation of individuals to South Sudan, citing internal and external challenges that threaten the security and safety of the new country. The Ministry of Interior did not respond. As a result, the Refugee Rights Clinic petitioned the Jerusalem Administrative Court on March 29 which resulted in the court issuing a temporary injunction preventing the Ministry of Interior from deporting the South Sudanese in Israel and removing their Temporary Group Protection status until April 15. On March 29, Israel's Ministry of Foreign Affairs also recommended that the Ministry of Interior delay deportations to South Sudan because of the deterioration of the security and humanitarian conditions in South Sudan over the past months. Unfortunately, on May 30, the Ministry of Foreign Affairs reversed its position. The Head of the National Security Unit of Prime

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<sup>1</sup> ASSAF - Aid Organization for Refugees and Asylum Seekers in Israel, the Association for Civil Rights in Israel, Physicians for Human Rights - Israel, the African Refugee Development Center, the Hotline for Migrant Workers, and Amnesty - Israel

Minister Netanyahu's office took the same position. This allowed the Jerusalem Administrative Court to issue its decision of June 7 that individuals from South Sudan do not have a legal right to Temporary Group Protection and may be deported, so long as they have the right to make individual asylum claims.

Reportedly, South Sudanese citizens are not well-informed about their legal rights to apply for asylum prior to signing the "voluntary" return document or deportation. They should be properly notified of such rights and be provided with a meaningful opportunity to exercise them. To comply with Israel's international law obligations, the Ministry of Interior should then fairly consider each individual asylum application through an impartial Refugee Status Determination process, including the involvement of appropriate interpreters and an independent appeal process. Unfortunately, due to Israel's extremely low rate of acceptance of asylum applications and the fact that most South Sudanese asylum applicants have not lived in South Sudan for years, many may find it difficult to express a personal well-founded fear of persecution upon return to South Sudan, making it more likely that most South Sudanese asylum applications will be rejected by Israel's Ministry of Interior. Nonetheless, submission of such asylum applications, particularly with the assistance of legal representation by organizations such as the Refugee Rights Clinic of Tel Aviv University Faculty of Law, remains very important. Legal representation of asylum applicants can provide an opportunity for these lawyers to positively influence the impartiality and fairness of the individual Refugee Status Determinations. If the Refugee Status Determinations are flawed, lawyers may submit appeals challenging the process through the Israeli court system. Such appeals might provide an opportunity to set important legal precedent and standards for future Refugee Status Determinations, improving the Israeli asylum system for applicants beyond the citizens of South Sudan. While there are only 700 to 2,500 South Sudanese, this could help the approximately 58,000 others.

Most countries face difficulty complying with international obligations as they start to develop domestic asylum procedures, and many improvements to countries' asylum laws and procedures have resulted from court challenges. Such legal advocacy is needed now, when the government of Israel is developing its asylum laws and procedures, and yet at the same time is enacting plans and procedures to deport all African migrants and asylum seekers.

### ***Current Situation in South Sudan***

The current round-up, detention and planned deportation of South Sudanese migrants and asylum seekers, referred to as "Operation Return Home," may subject the individuals who are either deported or "voluntarily" repatriated to South Sudan to grievous harm upon their return. In addition, "Operation Return Home" has the potential to harm relations between Israel and South Sudan and other African countries. South Sudan has been particularly supportive of Israel in a continent where Israel's friends are lacking.

On July 9, 2011, South Sudan became an independent country based on a referendum in which 99% of Southerners voted for independence from the Sudan. This independence followed a lengthy civil war in Sudan which ended with the Comprehensive Peace Agreement in 2005. The long conflict between Sudan and South Sudan has been a horribly violent one and the lack of trust between factions has challenged recent peace agreements despite strong international involvement. While the United Nations Security Council and the African Union have encouraged a cessation of ongoing hostilities and the resumption of negotiations, the situation in South Sudan remains volatile, and even perilous in many areas.

The U.S. has repeatedly expressed its concern about the absence of a peaceful resolution between Sudan and South Sudan and the growing humanitarian needs in South Sudan. On June 11, 2012, U.S. Secretary of State Hillary Clinton highlighted that the U.S. is "working very hard to try to find a peaceful way to bring this to a conclusion because in the absence of a peaceful resolution, [the U.S. is] very worried that war will break out again" between Sudan and South Sudan. Secretary Clinton further noted that "unfortunately, because of the ongoing disagreements and actions taken by both sides to try to assert themselves, there has been a return to violence disproportionately by the government in Khartoum because they are using modern military equipment – fighter planes and the like – against people living in the southern areas right across the border from the new South Sudan." In addition, on April 2, 2012, USAID called attention to the chronic and rising food insecurity in South Sudan

estimating that 4.7 million people will be food insecure in South Sudan in 2012, which is more than double the approximately 2 million people who were food insecure in South Sudan in 2011.

South Sudan and Sudan still have many issues to negotiate involving borders, water, oil revenue and the fate of the oil-producing Abyei border region. There has been continued violence in several areas including the Abyei region, South Kordofan, the Blue Nile, Jonglei State and Unity State. This violence has resulted in tens of thousands of people being displaced and hundreds of deaths. Tribal problems, lack of security outside towns, inexperienced government and corruption have raised fears that an independent South Sudan may not end the problems faced by its people.

The U.S. currently affords Temporary Protected Status<sup>2</sup> for individuals from South Sudan until at least May 2, 2013, due to ongoing armed conflict and extraordinary and temporary conditions in South Sudan that prevent its nationals from safely returning. This contrasts with the government of Israel's decision to withdraw the Temporary Group Protection status of South Sudanese citizens on June 7, 2012.

#### **Update: June 14 to 20, 2012**

- According to news reports and NGOs that work with the African migrant and asylum seeker community, Israel's round-up, detention and imminent deportation of South Sudanese citizens is instilling fear in both the South Sudanese and larger African migrant community, and has even caused some to go into hiding.
- According to news reports, as of June 19 approximately 600 African migrants and asylum seekers have signed documents stating that they agree to leave Israel "voluntarily" and return to their home country, however approximately 270 of these individuals were detained prior to signing the "voluntary" return document. Of the 600, approximately 500 are South Sudanese citizens, and 100 are from other African countries, including Ghana and Nigeria.
- Repatriation to South Sudan commenced on June 17, 2012 when the first "Operation Return Home" flight departed from Tel Aviv for Juba, South Sudan reportedly carrying 127 South Sudanese citizens. A second flight is scheduled for the following week.
- According to news reports, a delegation of government officials from South Sudan who travelled to Israel to assist with the return of its citizens expressed concern regarding the arrest and round-up of its citizens. The delegation requested a two-month extension of the one-week time period provided to South Sudanese citizens to request "voluntary" return, to allow them to prepare for return in a dignified manner. In response, Israel's Police and the Population, Immigration and Border Authority was said to extend the period during which South Sudanese may request "voluntary" return, however details regarding the length of the extension or verification of the reported extension have not been made public.
- According to a June 17 press release from Prime Minister Netanyahu's office, Israel's parliament, the Knesset, approved a new law that increases fines on employers of African migrants and asylum seekers and other undocumented migrants.

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<sup>2</sup> The U.S. Temporary Protected Status protects South Sudanese from deportation and allows them to work legally in the U.S while the Temporary Protected Status is in place.