

July 3, 2018

Proposed "Override Clause" threatens to strip asylum seekers of basic protections under Israeli law and could give Knesset carte blanche to violate their rights

A proposed amendment, submitted last week by *HaBayit HaYehudi* party, seeks to exclude Eritrean and Sudanese asylum seekers (referred to in Israeli law as "infiltrators") from the protection granted under Israel's [Basic Law: Human Dignity and Liberty](#).

The Basic Law, which is a constitutional law, has provided the legal basis for past High Court of Justice rulings that protected "infiltrators" (asylum seekers) from previous attempts to allow for their indefinite detention.

The Basic Law currently provides for an array of rights including the right to life, body integrity and dignity as well as the right to personal liberty and property. It protects the rights of anyone in Israel regardless of their legal status.

Article 8 of the Basic Law prohibits violation of rights protected by the Basic Law "except by a law that corresponds to the values of the State of Israel, which serves an appropriate purpose and to an extent that does not exceed what is required".

The amendment seeks to override this limitation and enable the Knesset to legislate a temporary four-year law which could violate the rights stipulated under the Basic Law. In order to override the limitation of Article 8, such legislation must aim at "preventing of infiltration into Israel and assuring the departure from Israel of infiltrators, including any provision regarding the period of their stay in Israel". In addition, it must be passed by a majority of 61 votes.

The explicit purpose of the proposed amendment is to ensure any future legislation that intentionally violates basic human rights of "infiltrators" is immune from judicial review.

If passed, the Knesset could pass laws enabling the indefinite detention of asylum seekers; their forced deportation; confiscation of a large percentage of their wages or any other measure deemed necessary to force the departure of asylum seekers and of people who are entitled to international protection.

The proposed amendment was submitted by MK Shuli Moalem on June 18th, 2018. Minister of Finance Moshe Kahlon told Israeli media that he supports a "narrow" Override Clause affecting only asylum seekers. He announced that the current proposed amendment would be submitted to the Ministerial Committee for Legislation for approval in the next weeks, as a first step towards becoming a law.

What can you do?

In your contacts with Israeli MKs and Ministers, urge them to refrain from promoting any laws, policies or other measures that violate the human rights of refugees and asylum seekers or undermine the protections granted to them under Israeli law.

Background

There are around 36,000 Eritreans and Sudanese asylum seekers living in Israel. Referred to only as “infiltrators” in Israeli legislation, they reside in the country under a “non-return policy” which prevents deportations to home countries and grants temporary stay permits. Such permits, renewed every two weeks to two months, do not grant the right to work and do not guarantee access to public health service or social services. Asylum seekers in Israel face an ineffective asylum system, with a recognition rate below 1 percent.

Since May 2017, a new legislation grants the Israeli authorities the power to withhold 20% of the salaries of all African refugees and asylum seekers until they “consent” to leave the country permanently.