

Hotline for Migrant Workers

"You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt" - *Exodus 22:20*

September 20, 2011

The Israeli Refugee Status Determination Process – General Background

Israel has signed and ratifies the 1951 Convention Relating to the Status of Refugees in 1954 and has signed and ratified the 1967 Protocol Relating to the Status of Refugees. However, until recently it had no independent mechanism for refugee status determination, and relied on the work of UNHCR. In 2001, internal guidelines were instated, in which the following procedure was stipulated – asylum seekers were to be interviewed by UNHCR; UNHCR would assess their claims based on the interview and its assessment on COI (Country of Origin Information); the UNHCR assessment would be presented before an inter-ministerial committee, composed of representatives of the Ministries of Interior, Justice and Foreign Affairs (hereinafter – the NSGB [National Status Granting Body]); the NSGB would form a recommendation as to whether or not to recognize the applicant as a refugee; and the Minister of Interior would decide whether or not to adopt this recommendation.

In July 2009 this has changed, and the Ministry of Interior (MOI) begun assessing refugee claims independently. As of this time, a new unit in MOI (the RSD Unit) interviews applicants, assesses the claims and takes UNHCR's place in presenting recommendations to the NSGB. This system was formalized in a written internal guideline dated January 2, 2011, a year and a half after its *de-facto* formation.

As detailed below, **the new system headed by MOI is a deeply flawed one, in which genuine refugees have no chance of being recognized as refugees.**

Some statistics – an asylum system with no refugees

Before assessing the system's flaws, some statistics should be considered. 3,400 applications for asylum were submitted in 2009, and 5,390 applications for asylum were submitted in 2010. Of these a total of 4,178 were presented by the new MOI RSD Unit to the NSGB.¹ Of these **not one single applicant was found by MOI as eligible for refugee status.** The Hotline for Migrant Workers (HMW) has no data with regard to 2011, but as far as we know, during the course of this year, the

¹ This information was presented by the Ministry of Interior in its submission to the District Court in Petah Tikva from May 5, 2011 and was supported by an affidavit signed by an MOI official in Administrative Petition 24177-01-11 Osorio v. Ministry of Interior, p.2.

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RSD Unit gave **only one positive recommendation**,² and rejected thousands of other asylum applications.

While most claims are assessed under the new MOI-based system, in the past two years, the NSGB has continued to rule on old cases, which UNHCR has started assessing before July 2009. Of these, only two have been recognized as refugees in 2009 and only six in 2010.³

In this context, it should be stressed that according to official data presented by the Israeli MOI, most persons who were found by UNHCR to be refugees, who meet the criteria of the 1951 Convention and the 1967 Protocol, are rejected by MOI, in violation of Israel's obligations under the Convention and Protocol, and specifically in violation of the *non-refoulement* principle. According to information received under the Freedom of Information Law, from July 2009 to May 2011, UNHCR found **61 persons**, who were interviewed and assessed prior to the entry into force of the new system, to be refugees. Of these, MOI has accepted UNHCR's positive assessment only in **eight cases**, and rejected the asylum applications of the other 53 applicants.⁴

These statistics imply that the Israeli asylum system is an ignoble one, which is set to reject asylum claims and not to examine them in good faith. This becomes clear when one compares the statistics from other developed countries. For instance, according to data published by UNHCR, in 2010 the United States has decided 70,024 asylum applications, of which 19,043 were recognized as Convention Refugees (27.2% recognition rate).⁵ Similarly in 2009, according to UNHCR's official data, the recognition rate United States was 47.3%.⁶ UNHCR statistics indicate that the recognition rate in other developed countries varies from 10 to 50 percent, while the recognition rate in Israel is considerably lower than 1%.

While it can be accepted that many of the asylum applications in Israel (as in any other developed country) may be without merit or frivolous, such an extremely low recognition rate is inherently suspicious.

² Tomer Zarhin, "Israel will grant asylum to a 4 year old because she is an albino", *Haaretz*, September 16, 2011, available only in Hebrew at: <http://www.haaretz.co.il/news/education/1.1475175>.

³ Ibid.

⁴ MOI letter of July 11, 2011 to Adv. Yuval Livnat.

⁵ UNHCR, Asylum Global Trends 2010 (June 20, 2011), Annexes, Table 10, available at: <http://www.unhcr.org/globaltrends/2010-GlobalTrends-annex-tables.zip>.

⁶ UNHCR, UNHCR Statistical Yearbook 2009 – Annexes (June 15, 2010), Table 10, p.92 available at: <http://www.unhcr.org/4ce5327f9.html>.

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Unfair Procedures for Refugee Status Recognition – Summary rejection of applications without full asylum interviews

As of January 2011, when the new internal guidelines entered into force, there are three types of routes an asylum seeker may be put through once he or she applies for asylum – the summary rejection route; the short procedure; and the full procedure. According to data supplied by the MOI, 75% of the asylum applications are summarily rejected.⁷

According to Articles 3-4 of the new guidelines, asylum applications are submitted to the MOI's Registration Unit, whose personnel are not qualified to determine refugee claims. The Registration Unit conducts a "basic interview" and decides whether the applicant should be summarily rejected or transferred to the RSD Unit for a full interview by personnel who have been trained to determine refugee claims. While according to the internal guidelines, the Registration Unit is not authorized to conduct an assessment of the applicant's credibility or of the Country of Origin Information, but only to assess whether the applicant, assuming all his statements are true, falls within the purview of the Convention and Protocol, in practice many of the applicants are summarily rejected at this stage based on credibility or COI assessments. This practice was criticized by both the detention tribunal⁸ and the courts,⁹ yet MOI continues to apply it.

Persons summarily rejected have no right to appeal the decision, are apprehended and detained on-site and are removed from Israel within three days. While persons summarily rejected have, in theory, the right to challenge their removal through the judicial system, the practice of immediate detention and deportation hinder the possibility to do so in most cases.

The summary rejection procedure, by which most claims are rejected, means that such applications are not examined on their merits, and are rejected by an MOI clerk who does not have the capacity and training to fully assess asylum claims and without a full procedure to determine the claim of the applicant. UNHCR has commented that this practice is inherently unfair and that it does not meet

⁷ Ministry of Justice letter of June 16, 2011 to Adv. Yonatan Berman.

⁸ For instance in a decision date February 8, 2011, in which the tribunal criticized the decision of the Registration Unit to summarily reject the applications of 2 Nigerian applicants whose claims met the Convention and Protocol's criteria, but were found after the "basic interview" not to be credible.

⁹ See, for instance the District Court's decisions in Administrative Petition 38490-01-11 Karanja v. Ministry of Interior (January 25, 2011) and Administrative Petition 9462-01-11 Shaugian v. Ministry of Interior (January 20, 2011).

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international standards.¹⁰ While HMW's position is that countries may, under certain conditions, apply accelerated procedures to deal with frivolous asylum claims, such procedures must meet basic standards of due process, such as allowing for a full interview by a person trained to fully assess refugee claims and for an opportunity to appeal an adverse decision.

Unfair Procedures for Refugee Status Recognition – Interrogations instead of asylum interviews

The prevailing attitude adopted by the interviewing clerks at the RSD Unit leads to inherently flawed procedures. Asylum clerks call themselves "interrogators", and their conduct indeed resembles the conduct of policemen interrogating a criminal suspect rather than what is required of a person interviewing persons who may be in sensitive situations.

The prevailing attitude taken by MOI interviewers is one of intimidation. Many asylum seekers attested to the fact that at the beginning of the asylum interview, before they even had the chance to present their claim, they were told that they are liars and that they might as well "confess" because their application will be rejected in any case. Lawyers who accompanied applicants to such interviews attested that it seems that interviewers assumed lack of credibility from the outset, and applied an adversarial and inquisitorial approach. Asylum seekers are often yelled at during these interviews in order to make them "confess" their "lies". Adverse credibility findings are based on a microscopic approach that insists that any co-called contradiction on peripheral issues that have no direct relation to the asylum claim dooms the application to be frivolous. Applicants are often not given the opportunity to explain themselves and to address supposed inconsistencies, and interviewers often insist that applicants answer questions by "yes" or "no", without an opportunity to fully explain their claims.

It should be noted that UNHCR shares this assessment and that in a document presented to the NSGB it criticized the MOI's technique for addressing credibility issues.¹¹

This conduct deems the process to be inherently flawed. It has been recognized by UNHCR and by courts in jurisdictions all over the world that credibility assessments cannot rely solely on "inconsistency" that does not go to the heart of the claim. It has been recognized that humans are not

¹⁰ UNHCR Comments on Sections 2-4 of the Regulations Regarding the Processing of Asylum Seekers in Israel, January 12, 2011.

¹¹ UNHCR Opinion of November 17, 2009.

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able to recall every single detail of events that occurred years ago, and that memory reconstruction is a common characteristic of persons retelling their stories, especially when retelling traumatic experiences.

Despite the position of UNHCR and virtually all countries with regard to the need for caution when relying on minor inconsistencies for rejection of asylum claim, MOI presented its approach in court, which relies on such minor inconsistencies, as a determinative factor. In MOI's own words as presented to the court: "Naturally, when a person's version is not authentic, contradictions will be found in details which are not at the heart of the claim".¹²

As a result of this technique, all asylum seekers who have a claim under the Convention and Protocol are found by MOI to be not credible and are rejected and deported. In many cases this determination is made with regard to asylum seekers who have been found to be credible by UNHCR.

It is not surprising, therefore, that the only case in which the MOI RSD Unit found a person to be a refugee, which was mentioned above, was a case of persecution of an albino – a biological trait that poses a difficulty to find a person not credible with regard to possessing it.

Selective and biased use of Country of Origin Information

Determination of asylum claims requires, in every country, a careful assessment of the information regarding the conditions in the applicant's home country. From the assessments that became available to us, it appears that the MOI RSD Unit misuses information in a manner that reveals ill-intention. MOI uses information out of its context, focuses on segments of reports that lead to a conclusion that all applicants should be rejected while ignoring additional information that may lead to other conclusions, both within the sources mentioned in its reports to the NSGB and from other sources.

The sources relied upon by MOI are not presented to the NSGB members, who make the final recommendation, by the RSD clerks. Rather, only selective summaries are presented to the NSGB.

¹² MOI's submission of April 14, 2011 to the Jerusalem District Court in Administrative Petition 37241-02-11 Abyot Abeba Webb v. Minister of Interior et al, p. 10.

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As resources are all in English and as the current chairperson of the NSGB does not speak any English, presenting the original text of the sources is practically impossible.

This could be illustrated by a few examples:

- **The RSD Unit's assessment of the situation in Somalia** – On December 2010 the RSD Unit presented a report on the situation in Somalia to the NSGB.¹³ This document, written in Hebrew, was a selective translation of one source. The first resource analyzed was the UK's Home Office Operational Guidance Note on Somalia,¹⁴ which partially supported the proposition that in certain cases asylum seekers may be returned to Somalia.¹⁵ Policies of other countries were not considered and were not brought to the attention of the NSGB. The RSD Unit purposely did not review the policies of any other countries, which provide protection to persons from at least certain areas of Somalia due to the dire situation in that country and the lack of state protection. For instance, for years, the United States provides blanket temporary protection to all refugees from Somalia.¹⁶ While countries should assess independently the conditions prevailing in asylum seekers' countries of origin, bringing to the attention of the decision-makers only one exceptional example, when there is a myriad of evidence pointing to the contrary, is a worrying and common practice of the RSD Unit.

The selectiveness also presents itself in the parts translated from the source itself. For instance, the RSD Unit neglected to translate the following warning that appears in the UK Guidance Note relied on: "Case owners must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence." (para. 1.2).

- **COI on persecution of gay men in Morocco** – in the case of a gay asylum seeker from Morocco, the RSD Unit concluded in its report that gay men are not in danger of persecution

¹³ Danny Hass, RSD Unit, Ministry of Interior, Somalia, Safe Return Process and Analysis of Somali Asylum Applications, December 20, 2010 (Hebrew)

¹⁴ UK Home Office Operational Guidance Note – Somalia, July 2010.

¹⁵ It should be noted that recently the European Court of Human Rights found the UK policy to be contrary to its international obligations: *Sufi & Elmi v. United Kingdom* (Applications nos. 8319/07 & 11449/07), June 28, 2011.

¹⁶ See Department of Homeland Security, Extension of the Designation of Somalia for Temporary Status, Federal Registrar / Vol. 75, no. 211 / November 2, 2010, 67383, available at: http://www.justice.gov/eoir/vll/fedreg/2010_2011/fr02nov10.pdf.

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in Morocco. Although the attorney representing the applicant presented a large number of reports and case-law supporting the argument that gay men are persecuted in Morocco, the RSD Unit's report was based on two single assertions – the fact that Elton John, a known gay singer, held a concert in Morocco; and the argument that a new gay rights organization, Basma, was established in Morocco “with the blessing of the authorities.” It seems there is no need to even explain the preposterousness of the first assertion as leading to a conclusion that gay men are not persecuted. As for the other assertion, an easy search on the internet combined with an expert opinion showed that Basma was merely a webpage for gay men in Morocco, and nothing near an organization supported by the government.

- **COI on official languages in Ethiopia** – in the case of an Ethiopian national of Oromo ethnic origin, the RSD Unit rejected the claim based on an adverse credibility assessment, because the applicant claimed to speak poor Amharic and to speak the Oromo language fluently. The RSD Unit's assessment stated that his claim was “illogical”, because “**the** official language in Ethiopia is Amharic”¹⁷. This assessment is based on a footnote referring to a page on the UCLA Language Materials Project website.¹⁸ However, the link mentioned in the assessment specifically stipulates that there are **two** official languages in Ethiopia. An additional page on the same website mentions that the second official language in Ethiopia is Oromo,¹⁹ the language spoken by the applicant.
- **COI on Colombia** – The RSD Unit presented to the NSGB an opinion regarding the situation in Colombia,²⁰ attempting to prove that the FARC guerilla group no longer poses a threat. The report cites two selective paragraphs from the chapter on Colombia in the US Country Report on Terrorism.²¹ Only the first and last paragraphs are cited by the RSD Unit. While reading these 2 paragraphs out of context, they suggest that there the Colombian Government is making an effort to halt the FARC activity, the RSD Unit neglects to cite the other paragraphs reporting that the momentum against FARC has slowed down; that “the group continued a campaign of terrorist attacks, extortion, and kidnappings” and “bombed several military and civilian targets in urban areas”; and so on.

¹⁷ RSD Unit Assessment, December 28, 2010 (Hebrew), p. 2.

¹⁸ <http://www.lmp.ucla.edu/Profile.aspx?menu=004&LangID=7>

¹⁹ <http://www.lmp.ucla.edu/Profile.aspx?LangID=211&menu=004>

²⁰ Danny Hass, RSD Unit, Ministry of Interior, Colombia: State Protection, Internal Protection Alternative and Para-Military Organizations, November 11, 2010.

²¹ United States Department of State, *Country Reports on Terrorism 2010 - Colombia*, 18 August 2011, available at: <http://www.unhcr.org/refworld/docid/4e5248302d.html>.

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These are just a few examples of the biased use the RSD Unit does with sources referring to conditions in the home countries of asylum seekers. The "research" conducted by the RSD Unit is highly selective and seems not as an attempt to discover the situation at home countries, but rather as an attempt to prove the assumption that there is no place unsafe.

The combination of this practice and the credibility assessment described above indeed leads to the inevitable conclusion reached by MOI in all cases – no one in Israel is a genuine refugee.

Adv. Yonatan Berman
Legal Department
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