

# **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

January 2012

## **The Prevention of Infiltration Law**

On January 10, 2012, despite loud opposition, the amendment to the Prevention of Infiltration Law passed in the Israeli Parliament with a large majority (37-8). The new law, which came into force on January 18, would detain asylum seekers for three years without trial, or indefinitely if they come from "enemy" states such as Sudan.

Under the law, refugees would be held for three years in detention without trial or any charges being brought against them. Refugees from enemy states, such as Sudan, would be kept in indefinite detention, although they have not been convicted of a crime. Minors arriving with family members will be subjected to the same punishment. This amendment was introduced by the government, which countered repeated attempts of opposition MKs to mitigate the most draconian provisions of the law.

The amendment does not distinguish between refugees, unauthorized immigrants or "infiltrators" with intention to harm Israel's security. In fact, according to the law, even people who are granted refugee status or permanent residency, but entered Israel without permission, will still be considered "infiltrators."

The Knesset's legal advisor, Eyal Yanon, voiced his opposition to the law, stating that it does not meet "minimal constitutional standards." The Prevention of Infiltration Law was originally passed in 1954 as part of Israel's emergency regulations to deal with the phenomenon of armed Palestinian infiltrators who entered Israel to conduct sabotage operations. The 1954 law criminalized the entry of all "infiltrators" from Arab countries, whether armed or not, setting their punishment to five years in prison. Up until the amendment came into force, the application of the law was tied to the "state of emergency" (which has been in effect in Israel since independence), but the amendment decouples the application of the law from the state of emergency. This means that even if the state of emergency is one day lifted, the law will remain in effect. In his opposition to the law, Yanon stated that using the 1954 law to deal with the tide of African refugees entering Israel "poses difficult legal problems, which we made known in past meetings with representatives of the Government."

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During the Knesset committee discussion on the bill, slight amendments were added, according to some of the reservations the legal advisor voiced. Prior to the committee vote, the law criminalized any assistance to refugees, setting a punishment of five years imprisonment for a person providing assistance to a refugee, and 15 years for a repeat offender. The committee narrowed down the application of this provision to those aiding armed infiltrators and drug and human traffickers only. Another change from the [original bill](#) removed a passage that stated that any refugee convicted even of a petty property crime would be automatically sentenced to life in prison. The Ministry of Justice strongly opposed the changes, and during the second reading in the plenum, attempted to broaden the application of the law to all refugees. However, due to the opposition of Knesset Speaker Reuven Rivlin (Likud) during the reading, the state agreed to withdraw the amendments, which means these passages apply only to armed infiltrators and human or drug traffickers.

According to the new law, the State is permitted to detain someone for up to 96 hours before they are required to present him before a judge. The new legislation extends this detention period to 14 days before a person needs to be brought before a judge, and seven days before the first time the detainee needs to be met by a border control officer. Furthermore, a deportation order can be issued based on a report written by troops, people who are not required to have any specialized knowledge regarding identifying refugees. The procedures do not distinguish between men, women and children, thus potentially subjecting everyone to the same conditions of arrest and deportation.

The Law enables a border control officer to release infiltrators who asked for asylum and the Israeli authorities have not begun processing their request within three months since their arrival. It also enables a border control officer to release infiltrators whose request was not addressed within nine months since their arrival. At of early 2012, there are only nine RSD officers in the Immigration Authority, with about 1,000 new asylum seekers arriving each month. There is a need to take into consideration the dysfunction that characterizes the Israeli RSD unit, established in July 2009: 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.<sup>1</sup> Of these **not one single applicant was found by MOI as eligible for refugee status**. The Hotline for

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<sup>1</sup> 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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Migrant Workers (HMW) has no data with regard to 2011, but as far as we know, during the course of this year, the RSD Unit gave **only one positive recommendation**,<sup>2</sup> and rejected thousands of other asylum applications. (See more about the Israeli RSD system in another HMW report).

Up until now, Sudanese and Eritreans (the vast majority of the asylum seekers arriving into Israel) were excluded from the RSD procedure. It is not clear yet whether the Israeli authorities intend to allow Sudanese and Eritreans' access to the RSD procedure. If allowed, HMW expects that most requests will not be dealt with at all. In these cases, the Border Control Officers might release asylum seekers nine months after their arrival as the law permits them. If Sudanese and Eritreans will continue to be denied access to the RSD procedure, the Border Control Officers might refrain from releasing nationals from enemy states at all and "infiltrators" from other countries will not be released before the minimum period of three years passes.

The purpose of the long to indefinite detention periods, according to the [explanatory notes](#), of the proposed amendment, is deterrence: The expectation is that the detention period will stop the massive infiltration or at least minimize it. That despite the fact that prolonged deprivation of liberty without due process for the sake of deterrence does not meet the legal standards set out by the Israeli Supreme Court. In addition, the Law of Entry into Israel is well-equipped to handle the entry of illegal migrants. HMW view is that the new law specifically targets refugees and asylum seekers that the state is unable or unwilling to deport due to the legal prohibition on the deportation of asylum seekers.

The law will target survivors of genocide, civil war, prolonged servitude, torture and rape. Past attempts to pass this law (which was first drafted in 2006) were foiled due to a harsh public response. However, following years of systematic incitement against refugees by Israel government officials, the Israeli public now largely sees refugees as illegal migrants, undeserving of sympathy or refuge.

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<sup>2</sup> 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>.