

Shelter Denied

Protection Gaps
in Israel
Facing Refugees
Fleeing
Gender-Based
Persecution

Submitted to the Committee
on the Elimination
of all Forms of Discrimination
Against Women (CEDAW)

40th Session
Geneva, Switzerland



התכנית לזכויות פליטים
Refugee Rights Program
برنامج حقوق اللاجئين

הקליניקות המשפטיות, אוניברסיטת תל אביב
The Law Clinics, Tel-Aviv University
عيادات القانون، جامعة تل أبيب



Organization for **R**efuge,
Asylum & **M**igration

January 2011

Shelter Denied:

Protection Gaps in Israel Facing Refugees Fleeing Gender-Based Persecution

Submitted to the
Committee on the Elimination of all Forms of Discrimination Against Women
(CEDAW)

40th Session
Geneva, Switzerland
January 2011



התכנית לזכויות פליטים
Refugee Rights Program
برنامج حقوق اللاجئين

הקליניקות המשפטיות, אוניברסיטת תל אביב
The Law Clinics, Tel-Aviv University
عيادات القانون، جامعة تل أبيب

*Law Faculty clinic representing and
advocating for refugee and asylum seeker
rights in Israel*

The Buchmann Law Faculty
Ramat Aviv, 69978 Israel
Ph: 972-3-6405264, Fax: 972-3-6407422
Email: anatbd@post.tau.ac.il



Organization for **R**efuge,
Asylum & **M**igration

*NGO advocating for refugees fleeing sexual
and gender-based persecution worldwide*

39 Drumm Street, 4th Fl.
San Francisco, CA 94111, USA
Ph: 1-415-399-1701, Fax: 1-415-373-9191
Email: info@oraminternationl.org

THE REFUGEE RIGHTS CLINIC AT TEL AVIV UNIVERSITY

Founded in 2003, The **Refugee Rights Clinic at Tel Aviv University** is Israel's first and only legal advocacy program devoted exclusively to refugees. The Clinic is part of the Tel Aviv University's Buchmann Law Faculty Clinical Legal Education Programs. It employs three interrelated strategies in its work to ensure that Israel is a safe haven for persons fleeing persecution: free legal aid for refugees and asylum seekers, research and advocacy to bring about legal and policy reform, and education of Israeli lawyers in the refugee field.

The **Refugee Rights Clinic** has played a central role in the development of refugee law and procedure in Israel, including key issues of eligibility, due process, and substantive protection. The Clinic cooperates closely with other Israeli and international NGOs.

More information about the **Refugee Rights Clinic** and its work is available online at www.law.tau.ac.il/Eng/?CategoryID=280.

ORAM – Organization for Refuge, Asylum & Migration

ORAM is an international not-for-profit organization providing international and domestic advocacy, education, and representation on behalf of refugees fleeing sexual and gender-based violence. Headquartered in San Francisco, California, USA, ORAM is the leading NGO worldwide on issues concerning lesbian, gay, bisexual, transgender, and intersex (LGBTI) refugees and asylum seekers. In addition to directly assisting refugees who have escaped countries persecuting sexual minorities, ORAM works closely with the UN High Commissioner for Refugees (UNHCR), the U.S. Department of State, LGBTI community groups, and refugee NGOs to increase awareness of and improve international protection standards for these vulnerable refugees.

ORAM serves the international refugee community through cutting-edge research, publication, community education, advocacy, legal and procedural counseling, direct representation, and resettlement assistance. The organization provides free-of-charge representation through the creative marriage of modern technology and legal expertise. ORAM supports and empowers its clients directly as it works to ensure their protection and safe resettlement by governments, IGOs, NGOs, and communities.

More information about **ORAM** is available online at www.oraminternational.org.

**SHELTER DENIED:
PROTECTION GAPS IN ISRAEL FACING
REFUGEES FLEEING GENDER-BASED PERSECUTION**

TABLE OF CONTENTS

1. EXECUTIVE SUMMARY	1
2. INTRODUCTION.....	2
3. ASYLUM PROCEDURES IN ISRAEL.....	3
4. ISRAEL’S FAILURE TO RECOGNIZE GENDER-BASED PERSECUTION AS AN ASYLUM GROUND (CEDAW Arts. 1, 2, 15).....	4
4.1 CASE EXAMPLES	5
<u>GG (Central Asia)</u>	6
<u>RZ (Morocco)</u>	6
<u>DA (Sri Lanka)</u>	8
<u>MK (Palestinian Authority)</u>	8
<u>MB (Guinea Conakry)</u>	9
<u>SZ (Ethiopia)</u>	10
<u>WS (Cameroon)</u>	11
<u>YP (Ukraine)</u>	11
5. LIMITED COMPLEMENTARY FORMS OF PROTECTION FOR REFUGEES IN ISRAEL FLEEING GENDER-BASED PERSECUTION.....	12
6. CONDITIONING OTHER STATUS AND BENEFITS ON WAIVER OF ASYLUM CLAIM.....	12
7. EMPLOYMENT RESTRICTIONS AND LACK OF SOCIAL SUPPORT: DETRIMENTAL IMPACT ON VULNERABLE WOMEN REFUGEES (CEDAW Art. 11).....	13
8. CONCLUSION	16

1. EXECUTIVE SUMMARY

It is estimated that there are approximately 34,000 asylum seekers in Israel today. Of these, 15 to 20 percent are women and children, many of whom have fled domestic violence, rape, forced marriage, and other forms of gender-based persecution. This report outlines in detail how Israel's failure to protect forced migrants fleeing sexual and gender-based violence both violates its international legal obligations and exposes these individuals to further danger. The lack of protection available in Israel violates key provisions and mainstream interpretations of the *1951 Convention Relating to the Status of Refugees* (1951 Convention) and its 1967 Protocol and the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).

This report addresses Israel's consistent failure to grant refugee status to victims of gender-based persecution. The primary rationale provided by refugee status decision makers—much like the reasoning used in the analysis of sexual orientation claims—is that gender-based violence is a “social” or “cultural problem” that does not lead to refugee protection. Decision makers reject gender-based claims on the basis that women do not form a “particular social group,” and that gender-based violence does not implicate the 1951 Convention because it is usually perpetrated by non-state actors. All of these arguments fall far outside the common interpretation of the 1951 Convention, whether as reflected in the UNHCR's *Guidelines on Gender-Related Persecution* or in leading international jurisprudence. In failing to provide these refugees protection, Israel violates both the 1951 Convention and CEDAW Articles 1, 2, and 15.

A related problem addressed in this report is the Ministry of Interior's requirement that forced migrants seeking complementary forms of protection, including one-year “rehabilitation” visas, must withdraw their asylum applications, making long-term protection unattainable.

This report also highlights how the prohibition against work and lack of social assistance to asylum seekers in Israel has a particularly detrimental impact on women. Often destitute and without legal avenues to challenge insufficient social and financial assistance, many women asylum seekers must resort to survival sex work. As such, these women are twice victimized: first by their persecutors in countries of origin, and then by an asylum system in Israel that consistently fails to recognize their legitimate protection concerns.

To meet its obligations under CEDAW Articles 1, 2, 11, and 15, Israel must:

- Recognize gender-based persecution as a legitimate basis for refugee status, and that persecutory treatment can be carried out by non-state actors;
- Add guidelines on gender-based persecution to existing asylum regulations;
- Train all personnel handling refugee claims on gender-sensitive procedures and techniques;
- Allow traumatized asylum seekers a year of rehabilitation prior to being interviewed; and
- Provide asylum seekers the right to work so that they can subsist with dignity.

2. INTRODUCTION

Israel is party to both the 1951 Convention and its 1967 Protocol.¹ However, it has not incorporated the 1951 Convention into domestic law and has been slow to establish administrative and regulatory mechanisms necessary for its implementation. In July 2009, the Israeli government assumed full responsibility for refugee status determination, which had formerly been performed by the United Nations High Commissioner for Refugees (UNHCR).²

In 2007, Israel emerged as a significant refugee-receiving country in the Middle East. With growing protection problems in Egypt and heightened barriers facing migrants attempting to access Europe, large numbers of asylum seekers began to make their way to Israel through the Sinai Desert, clandestinely crossing the Egypt–Israel border. The Israeli government does not share detailed statistical information regarding this phenomenon. However, UNHCR estimates that there are currently 21,880 asylum seekers in Israel, of which 15 to 20 percent (3,282 to 4,376) are women and children.³

¹ Israel ratified the 1951 Convention on October 1, 1954 and acceded to the 1967 Protocol on June 14, 1968. See Multilateral Treaties Deposited with the Secretary General Volume I, Chapter V, §2 & 5, available at http://treaties.un.org/Pages/ViewDetailsII.aspx?&src=TREATY&mtmsg_no=V~2&chapter=5&Temp=mtmsg2&lang=en [last visited January 4, 2011]; See generally United Nations Convention Relating to the Status of Refugees, Art. 1, opened for signature July 28, 1951, 189 U.N.T.S. 150.; United Nations Protocol relating to the Status of Refugees, opened for signature Jan. 31, 1967, 606 U.N.T.S. 267 [hereinafter Protocol] [together hereinafter U.N. Refugee Convention or 1951 Convention].

² This transition from UNHCR to MOI oversight of refugee status determination in Israel took place without the implementation of regulations or a formal announcement. New regulations entitled “Procedure for Handling Political Asylum Seekers in Israel” came into force only in January 2011, six months after the Ministry assumed responsibility for the status determination procedure. See Procedure for Handling Political Asylum Seekers in Israel (2011), available at <http://piba.gov.il/Regulations/Procedure%20for%20Handling%20Political%20Asylum%20Seekers%20in%20Israel-en.pdf> [last visited Jan. 4, 2011].

³ UNHCR, *Statistical Snapshot of Israel*, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4864b6> [last visited January 4, 2011].

This report highlights the two key protection gaps currently facing vulnerable asylum-seeking women in Israel: First, the State's failure to recognize the refugee claims of women fleeing gender-based persecution; and second, the prohibition on employment and lack of social benefits available to asylum seekers, which detrimentally impact women.

The report's findings are derived from an evaluation of reasoning provided by the State when rejecting gender-based asylum claims, case files, and information provided by refugee and migrant women. The identities of the individuals referenced in this report have been withheld to protect their privacy and safety. Their testimonies and personal information are available to the CEDAW Committee upon request.

3. ASYLUM PROCEDURES IN ISRAEL

Prior to July 2009, UNHCR was responsible for assessing refugee claims in Israel. Based on information gathered during detailed interviews and an evaluation of relevant country of origin conditions, UNHCR issued detailed claim assessments to the Refugee Advisory Committee, also known as the National Status Granting Body (NSGB). The four-member committee, which now reviews decisions made by the Ministry of Interior (MOI), includes a Chairperson, consisting of someone qualified to serve as a district judge but who is not a civil servant, and representatives of the Ministries of the Interior, Justice, and Foreign Affairs. Until July 2009, the Refugee Advisory Committee formulated recommendations based on the UNHCR's assessment and their own evaluation of claims. Final decisions on whether to grant status were made by the Minister of Interior. While applicable regulations did not provide a right to appeal, there was a limited option to request a re-hearing of the case if new evidence was discovered, or if there was a change in case circumstances. Requests for re-hearing were heard pursuant to the same procedure and by the same bodies that rendered the initial decision. Rejected asylum seekers were subject to detention and deportation.

In July 2009, Israel implemented its current asylum system. The new system designates MOI, rather than UNHCR, as the body responsible for assessing refugee claims. MOI officials interview asylum seekers, assess their claims, and refer their assessments to the Refugee Advisory Committee. As under the previous system, the Refugee Advisory Committee then forms a recommendation which serves as the basis for the Minister of Interior's decision. In the several months that have passed since the transfer of refugee status determination (RSD) procedures from UNHCR to MOI, it has become evident that MOI "interrogators" (as they often refer to themselves) conduct lengthy RSD interviews in a highly antagonistic manner, focusing on contradictions in claimants' testimony.

The new asylum regulation, operative on January 2, 2011, does not include any gender-sensitive procedures. Only one clause refers to gender at all: it provides the right to request that the interview “be conducted by a staff member of the same gender as the asylum seeker.”⁴ While the clause notes that “the unit will make every possible effort, considering personnel limitations, to grant this request,” It provides no guarantee to the asylum seeker.⁵

For years, the Refugee Advisory Committee operated in secrecy. Neither asylum seekers nor their representatives were allowed to appear before the Committee. Moreover, because the Committee only provided limited reasoning for the denial of applications, and its deliberations were not disclosed, it was difficult for asylum seekers and their lawyers to identify the actual reasons for rejection. However, a recent Administrative Court ruling responding to a petition filed jointly by the Refugee Rights Clinic at Tel Aviv University and the Hotline for Migrant Workers has obligated the Refugee Advisory Committee to now disclose its deliberations.

The Refugee Advisory Committee’s principled rejection of gender-based refugee claims is clear in its deliberations. These deliberations, together with legal briefs submitted by the State defending rejection decisions, and information gathered during interviews with asylum seekers form the basis of this analysis of protection gaps facing victims of gender-based persecution.

4. ISRAEL’S FAILURE TO RECOGNIZE GENDER-BASED PERSECUTION AS AN ASYLUM GROUND (CEDAW Arts. 1, 2, 15)

UNHCR’s *Guidelines on Gender-Related Persecution*⁶ (Gender Guidelines) and the leading jurisprudence in many national jurisdictions acknowledge that women form a “particular social group” within the refugee definition of the 1951 Convention.⁷

UNHCR’s Gender Guidelines and a wide range of other sources, including case law and social science literature, further acknowledge that particular forms of persecution are specific to

⁴ Ministry of the Interior, *Procedure for Handling Political Asylum Seekers in Israel*, Art. 3(b)(4), available at <http://piba.gov.il/Regulations/Procedure%20for%20Handling%20Political%20Asylum%20Seekers%20in%20Israel-en.pdf> [last visited Dec. 30, 2010] [hereinafter Israel Asylum Regulations].

⁵ *Ibid.*

⁶ UN High Commissioner for Refugees, *Guidelines on Int’l Prot. No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, [hereinafter Guidelines on Gender-Related Persecution], available at <http://www.unhcr.org/refworld/docid/3d36f1c64.html> [last visited December 30, 2010].

⁷ *Islam (A.P.) v. Sec’y of State for the Home Dep’t; Regina v. Immigration Appeal Tribunal and Another, Ex parte Shah* [1999] 2 W.L.R. 545, 564-5; *Minister for Immigration and Multicultural Affairs v. Khawar*, [1999] 168 A.L.R. 190; *Matter of Fauziya Kazinga*, Int. Dec. 3278 (BIA 1996).

women.⁸ Commonly recognized examples include domestic violence, honor killing, female genital mutilation, and forced marriage. When such acts rise to the level of persecution, and when the state of origin or habitual residence is unwilling or unable to provide protection, the claimant may be recognized as a refugee under the 1951 Convention.⁹

Israel's Refugee Advisory Committee consistently refuses to recognize women fleeing gender-based persecution as refugees. Cases rejected to date include those involving: domestic violence; forced marriage; re-trafficking for sex trade; inability due to cultural and social norms to survive as a woman without family protection; and persecution based on sexual orientation. The Refugee Advisory Committee's primary rationale for rejecting these claims is that they revolve around "social or cultural problems" that do not implicate any legal obligation on the part of Israel. The Committee also claims that persecution by non-state actors (*e.g.*, domestic partners, family members, traffickers) does not fall within the ambit of the 1951 Convention, despite vast international jurisprudence to the contrary. It has refused to recognize refugees' assertions that state authorities are unable or unwilling to provide them with protection from these non-state actors. The Refugee Advisory Committee also uses a "floodgates" argument to deny asylum claims made by women based on their gender, and similarly by those fleeing persecution based on sexual orientation or gender identity: if such claims were recognized, it argues, the number of future applicants would skyrocket.

By refusing to provide protection to women fleeing persecution resulting from gender-based violence, Israel violates not only the 1951 Convention, but CEDAW Articles 1, 2, and 15 as well. Women fleeing gender-based persecution are thus twice victimized: first in their countries of origin, where they confront sexual violence and gender-related discrimination, and later, in Israel, when they are denied adequate protection.

4.1 CASE EXAMPLES

The following case descriptions showcase the rationale employed by Israel's Refugee Advisory Committee when evaluating gender-based refugee claims. Also included are examples of claims based on persecution relating to sexual orientation, because the reasoning employed by the Committee in such cases is identical to that employed in gender claims.

⁸ *Guidelines on Gender-Related Persecution*, *supra* note 6 at Art. 9.

⁹ *Islam (A.P.) v. Sec'y of State for the Home Dep't; Regina v. Immigration Appeal Tribunal and Another, Ex parte Shah* [1999] 2 W.L.R. 545, 564–5.

GG (Central Asia)

GG was systematically beaten by her husband after he discovered she was lesbian. She argued to the Refugee Advisory Committee that she would not find protection in her country, and that her husband's position as a senior army officer would enable him to locate her anywhere in the country. UNHCR recommended that she be recognized as a refugee because her husband would easily locate her if she were returned, and she would not receive adequate protection from the authorities. UNHCR concluded that because of the strong homophobic culture in her country of origin, she would face persecution if her sexual orientation was discovered, including facing barriers finding work and accommodation, and being exposed to family violence. UNHCR also found that GG could not avoid persecution by relocating elsewhere within the country. The Refugee Advisory Committee rejected her asylum claim arguing that "family situation" and domestic violence are not grounds for refugee status. The rejection letter sent to GG simply stated:

Your case as explained and stated by you does not fall under the mandate of the 1951 Geneva Convention Relating to the Status of Refugees for the following reasons: You described acts of violence and threats from your husband due to your relations with another woman. After thorough review of your personal situation, it has been decided that your claim for asylum is in connection with **family problems**. Based on the above mentioned elements, your claim cannot be established in regard to the 1951 Refugee Convention and the 1967 Protocol. Therefore your refugee claim is rejected.¹⁰

RZ (Morocco)

RZ alleged he had been unable to conceal his sexual orientation due to his feminine demeanor, and that he was raped as a child by his brothers and later by co-workers. He claimed he had been unable to seek state protection because Moroccan law penalizes homosexual relations, and because gay men are often harassed, detained, and suffer harm at the hands of the police. UNHCR recommended that his claim be granted, but the Refugee Advisory Committee disagreed, and denied him protection. With the exception of the Chairperson, the three other members of the Committee found that the 1951 Convention does not apply to those fleeing persecution due to their sexual orientation:

¹⁰ Refugee Advisory Committee, Rejection letter in the case of GG, March 3, 2010. Translation from the Hebrew. [Emphasis added.]

The Ministry of the Interior: Our position is that sexual orientation is not protected by the Convention, and this is an unjustified expansion of the Convention. In his case it is appropriate that protection will be found for him in a third country with the assistance of the Ministry of Foreign Affairs....

The Ministry of Justice: I am concerned. What is the solution? If he has a chance to file an application based on common law marriage, he should do so....

The Chairperson: The category of sexual orientation may be considered a persecuted group. I found in Attorney Ben-Dor's arguments that this is the jurisprudence in many countries in the world. For this reason I would not reject his application because of his sexual orientation. But I point out that he was not persecuted in Morocco, he suffered social harassment and not by the government. He worked and supported himself as usual. It is impossible for the Committee to solve such problems which exist all over the world. The Committee for Political Asylum [stet] is not the answer to all the social problems in the world....

The Ministry of Foreign Affairs: I understand that the traditional position is that the Refugee Convention does not apply to sexual orientation. In this case, his return to Morocco does not seem possible, therefore a solution should be found in Israel.

The Ministry of the Interior: There is an opposition here to sexual orientation as a particular social group.

Decision: According to the members of the Committee, excluding the Chairperson, the Refugee Convention does not apply to groups of various sexual orientations. According to the Chairperson, it is possible to interpret the Convention as applying to groups of people, and individuals among them, due to their various sexual orientations. However, the claimant did not suffer persecution while he was in Morocco. He did suffer harm in his childhood by his brothers, and when he was mature—by people who he thought were his friends and by passing people in the streets, but he lived and worked in a respectable occupation. Indeed the laws of Morocco prohibit homosexuality and there were incidents where policemen were sent to prevent conferences or meetings of gay men, but they did not persecute the applicant....¹¹

¹¹ Refugee Advisory Committee, Decision in the case of RZ, February 2, 2010. Translation from the Hebrew.

DA (Sri Lanka)

DA landed at Tel Aviv Ben-Gurion Airport in September 2008. She was denied entry and was scheduled for immediate deportation despite her declaration that her deportation would expose her to danger. UNHCR interviewed her at the airport holding facility and determined that her fear of forced marriage and domestic violence in Sri Lanka merited further examination. Because MOI refused to further delay her deportation, the Refugee Rights Clinic and the Hotline for Migrant Workers filed an urgent appeal to the Tel Aviv Administrative Court to stay deportation pending a final resolution of her asylum claim. In its brief, responding to the petitioner's request for an interim injunction, the State argued:

Shortly, due to the lack of time—and this is the place to emphasize that the State will expand in detail in its answer to the petition—the State will argue that **marital problems and even domestic violence, are not grounds for asylum, for to say otherwise will cause millions of miserable people from all over the world to move from country to country and request to register as refugees.**¹²

After an injunction was granted, the petitioner was permitted to apply to the UNHCR, which granted a second interview (and ultimately recommended that her claim be rejected). The petitioner, who had already been in the airport holding facility for seven weeks, decided not to challenge this decision and was deported.

MK (Palestinian Authority)

Because Israel currently refuses to consider asylum claims filed by Palestinian claimants, the petitioners filed a request for a temporary residency for the Palestinian partner based on their partnership and argued that the danger he would face in the Palestinian Authority due to his sexual orientation is a “particular humanitarian circumstance” which obligates the state to provide protection.¹³ The petition was rejected by a statutory “Professional

¹² HCJ 2595/08 *DA v. the Ministry of the Interior*, State's response (2008). Translation from the Hebrew. [Emphasis added.]

¹³ The State's analysis of claims for protection based on gender-based persecution was set forth in detail in response to a petition filed by the Refugee Rights Clinic at the Israeli Supreme Court on behalf of two same-sex partners (men), an Israeli and a Palestinian. Although this is not an asylum case it raises similar questions—*i.e.*, whether a person who is in danger of persecution due to his sexual orientation is entitled to protection in Israel. The case was filed under Article 3A1 to the 2003 Citizenship and Entry to Israel Law (interim law) which created a narrow humanitarian exception to the general prohibition on granting status to Palestinians in Israel. The article allows Palestinians, who have a family relative legally staying in Israel, to file a request for a permit to stay in Israel, providing there are “special humanitarian considerations” (the law specifically states that the fact the Palestinian has an Israeli partner, or that they have mutual children, will not serve as a special humanitarian consideration). Such petitions are filed to a “Professional Advisory Committee under Article 3A1 to the Citizenship and Entry to Israel Law (Interim order)” appointed by the Minister of the Interior and are

Advisory Committee,” and the refusal is currently being challenged at the Supreme Court. In its answer to the Court petition the State reasoned as follows:

We should assume that the percentage of gays in the Palestinian society is similar to the percentage of gays in other societies. There are societies which are more open than the Palestinian society in this matter—fortunately, Israeli society is mostly more open—and there are societies which are more conservative than Palestinian society on this issue. We may accept the proposition, and the special Humanitarian Committee has pointed to this in its decision which is challenged in this petition—that the conservatism of the Palestinian society did not make the life of the petitioner easy or comfortable. But this is the situation of many gays who live in the Palestinian Authority and **in other conservative societies.**

This fact does not trigger a legal obligation on Israel to accept to its territory any foreigner, whose society in which he lives is not tolerant to his lifestyle.¹⁴

The State’s response is consistent with its reasoning in other claims for protection filed by Palestinian women fleeing honor killings or those perceived as having “inferior morality,” including prostitutes. According to the State, such claims for protection in Israel are attempts to force the Court to provide a legal solution to a problem that is mainly social and cultural. These and other decisions clearly betray the State’s position that those fleeing persecution resulting from entrenched, violent discrimination against women or sexual minorities do not require international protection.

MB (Guinea Conakry)

At 16, MB’s father told her that she was to become the second wife of a much older man in her village. MB refused and was severely beaten. Her father then threatened to kill her if she continued to refuse the marriage so she fled her country and traveled through the Sinai Desert to Israel. On the way, she was repeatedly raped, often gang raped, by her Bedouin smugglers. She arrived in Israel in September 2006 and with the assistance of the Refugee Rights Clinic, she filed an asylum application. MB’s asylum claim was rejected by the Refugee Advisory Committee in a brief decision:

then decided by the Minister based on the Committee's recommendation. HCJ 4487/09 *John Doe v. the Ministry of the Interior*, State’s response [2009]. Translation from Hebrew.

¹⁴ *Ibid.* [Emphasis is in original.]

The difficult circumstances of the case reveal various types of abuse suffered by the claimant. However, our position is that the claimant does not meet the criteria for receiving asylum in Israel according to the Refugee Convention. The Committee recommends transferring the claimant's case to the Inter-Ministerial Committee for Humanitarian Affairs in the Population Registry¹⁵ to examine the possibility of providing the claimant humanitarian status (the position of the Ministry of Foreign Affairs is that there is a question regarding the applicability of the Convention in her case).¹⁶

MB's appeal, submitted by the Refugee Rights Clinic, is still pending.

SZ (Ethiopia)

SZ was born into domestic servitude. She fled her country after her owner decided to marry her to an older man. The Refugee Advisory Committee rejected her claim, reasoning that while the claimant was a victim of terrible social conditions, these conditions did not constitute persecution under the 1951 Convention. In stark language, the Chairperson noted:

We should support women's liberation in the world, but the question is whether it is our role as a committee to recognize as refugees those people who want to be free of that cultural norm.¹⁷

SZ's appeal was submitted by the Refugee Rights Clinic and is still pending. The appeal, supported by an expert opinion submitted by a leading Israeli Social Scientist and an African Studies scholar, argues that even if SZ was not returned to her former owner, her gender, her young age, and her former status as a slave, would place her in serious danger of being trafficked for sex or severely socially ostracized. Thus, her only mode of sustenance would be sex work.

¹⁵ The Inter-Ministerial Committee for Humanitarian Affairs was established by MOI to provide recommendations on cases which would not otherwise qualify for status in Israel. Procedure No. 5.2.0022, the *Procedure Regulating the Work of the Inter-Ministerial Advisory Committee for the Determination and Granting Status in Israel on Humanitarian Grounds*, provides general guidance to the Committee, but does not detail considerations the Committee should take into account or the type of status that should be granted in varying circumstances.

¹⁶ Refugee Advisory Committee, Decision in the case of MB, November 13, 2008. Translation from the Hebrew.

¹⁷ Refugee Advisory Committee, Decision in the case of SZ, January 5, 2010. Translation from the Hebrew.

WS (Cameroon)

WS, a married Christian woman, refused to convert to Islam, as her husband demanded. As a result, her husband beat her repeatedly, causing her to be hospitalized. WS approached the police, who sent her home to her husband. She eventually fled Cameroon, arriving in Israel via Egypt. UNHCR recommended that WS be recognized as a refugee. The Refugee Advisory Committee disagreed, finding that the case did not fall under the 1951 Convention, as it was a matter of “domestic dispute.” The Committee subsequently referred the case to the Inter-Ministerial Committee for Humanitarian Affairs without notifying WS or her counsel. Unaware of the referral, the Refugee Rights Clinic petitioned the Jerusalem Administrative Court, requesting review of the Refugee Advisory Committee’s decision. Shortly after filing this petition, MOI announced that WS would receive a one-year work permit on a humanitarian basis. While WS has the right to request an extension of the work permit, it is a highly discretionary status.

YP (Ukraine)

YP was trafficked into Israel as a sex worker and was held in slavery-like conditions for six months. In September 2004, she was arrested when the police raided the place she was being held. After her release, YP agreed to testify against her traffickers. Based on her testimony, the traffickers were sentenced in November 2004 to several years in prison. YP subsequently claimed that, as a result of her cooperation with the State, her family in the Ukraine was threatened that she would be harmed upon her return. Her attorney filed a request for protection as a trafficking victim, but this petition was rejected.¹⁸ Subsequently, the Refugee Rights Clinic filed an asylum application on her behalf. The Refugee Advisory Committee convened several hearings, during which Committee members expressed doubts about the applicability of the 1951 Convention to human trafficking victims. It further reasoned that the claimant would not face persecution in Ukraine. The Refugee Advisory Committee concluded that YP could instead seek protection as a victim of trafficking who testified against her traffickers despite the fact that she had already applied and been rejected by that body.

¹⁸ According to MOI Procedure No. 6.3.0008, the procedure for providing status to victims of slavery, human trafficking, and forced labor, a victim may be eligible for a one-year rehabilitation working visa. At the end of the year, the victim is normally expected to leave Israel, unless there is special justification to extend the permit.

5. LIMITED COMPLEMENTARY FORMS OF PROTECTION FOR REFUGEES IN ISRAEL FLEEING GENDER-BASED PERSECUTION

A recurring theme in Refugee Advisory Committee decisions is that survivors of gender-based persecution are not refugees, but individuals who should be provided humanitarian protection. This response to refugee claims based on sexual- and gender-based violence is not only inconsistent with Israel's international legal obligations, but puts the lives of these refugees at risk. The Refugee Advisory Committee's "humanitarian" approach is unsustainable for a variety of reasons.

First, asylum seekers who fulfill the refugee definition have a right to receive protection under the 1951 Convention and its Protocol, while humanitarian applications are always subject to the broad discretion of MOI. In fact, humanitarian status is seldom granted. Of all the aforementioned cases, only one claimant, WS, received humanitarian status.

Second, the temporary residency granted to a recognized refugee imparts social rights equal to that of citizens (including medical insurance, the right to family unification, and the right to an Israeli travel document). The State provides "humanitarian" cases with one-year work permits; however, medical coverage and other necessary benefits are not provided.

Third, humanitarian status is far more precarious than refugee status. Once a person is recognized as a refugee, cessation of her status is subject to the criteria enumerated in Article 1C of the Refugee Convention.¹⁹ In contrast, humanitarian status is granted at the discretion of the Minister of the Interior and may be terminated at his discretion. When the status is withdrawn, an individual falls out of legal status and is deportable. In the case of refugees, this means being returned to a country where one's life or liberty is put at risk; in other words, *refoulement*.

6. CONDITIONING OTHER STATUS AND BENEFITS ON WAIVER OF ASYLUM CLAIM

The Ministry of Interior's general policy—unsupported by any of its published procedures—is that a person may not utilize two different venues to legalize his or her stay in Israel simultaneously. Thus, for example, when an asylum seeker forms a partnership with an Israeli citizen and submits a request for partnership-based status, she is required to withdraw her asylum application. Since partnership-based status requires couples to remain together for a five-year period, if the couple separates before the completion of the procedure, the foreign partner will face deportation proceedings. In this way, an asylum

¹⁹ See U.N. Refugee Convention, *supra* note 1, at Art. 1C.

seeker who withdrew her refugee claim in the hopes of gaining status through her partner may, at a later stage, find herself returned to a country where she would face persecution.²⁰

The same problem arises in the context of trafficking victims who are forced to choose between filing an asylum claim and applying for a one-year rehabilitation visa. This violates Article 14(1) of the *Palermo Protocol* which explicitly states that the rights of victims of trafficking under the protocol will not affect the rights, obligations, and responsibilities of States and individuals under international law and in particular the 1951 Convention.²¹ Victims of trafficking, slavery and forced labor often arrive in Israel in such traumatized states that they are unable to endure the rigorous refugee status determination process. Many instead opt for a one-year rehabilitation visa without understanding MOI's requirement that they waive their claims for refugee status. This means that at the end of the visa period, some of the most vulnerable refugees are left without protection and shut out of the asylum system altogether.

7. EMPLOYMENT RESTRICTIONS AND LACK OF SOCIAL SUPPORT: DETRIMENTAL IMPACT ON VULNERABLE WOMEN REFUGEES (CEDAW Art. 11)

Most asylum seekers who are currently in Israel are prohibited from working. They are issued a “conditional release” visa,²² which, according to the Ministry of the Interior, does not allow them to work. Sudanese and Eritrean asylum seekers, who do not undergo RSD procedures and are given a form of withholding of deportation,²³ are also issued this visa, despite the fact that they may spend several years in Israel.

Asylum seekers and others who are given “deferred deportation” or “temporary protected” status are not entitled to any state-sponsored social benefits. There are no state-run shelters. They are not provided living allowances. Access to medical services is limited to emergency life-saving treatment. Without the right to work legally, these asylum seekers and migrants must find any way possible to support themselves. As noted by Avital

²⁰ Art. 1(c) of the new asylum regulations further complicates the situation by requiring asylum seekers to submit applications for refugee status within one year of their date of entry into Israel. See Israel Asylum Regulations, *supra* note 4, at Art. 1(c).

²¹ See U.N. General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, Art. 14(1), opened for signature Nov. 15, 2000, available at <http://www.unhcr.org/refworld/docid/4720706c0.html> [last visited Jan. 5, 2011].

²² Entry to Israel Law, 5712-1952, Art. 2(a)(5) (containing the provisions on conditional release visas).

²³ Sudanese and Eritrean nationals currently receive temporary protection in Israel and therefore do not undergo RSD procedures. See, e.g. HCJ 31808/10 *Hijab v. Ministry of the Interior* [2010]; HCJ 35858/10 *Sayko v. Ministry of the Interior* [2010].

Sternberg, a senior legal advisor at the Ministry of Justice, in a debate in the Knesset's Committee for the Examination of the Problem of Migrant Workers:

As long as we are talking about a population that cannot be deported, and one of the things that has not been mentioned here, is that currently we are unable to deport people to Sudan and to Eritrea. If you do not allow them to work you are forcing them to make their own living, I am not sure exactly how, but you cannot leave them in the streets to starve. It is important to say this. I am saying we would have to find a solution. The solution of totally prohibiting employment is very, very difficult, both morally and legally.²⁴

The tension between the State's aim to deter future asylum seekers from arriving in Israel by prohibiting employment, on the one hand, and the understanding that prohibiting them from working will cause a serious humanitarian crisis, on the other hand, led to a distorted policy, according to which asylum seekers are not allowed to work, but their employers are not penalized for employing them.²⁵

A recent judgment by Judge Amir of the Merkaz Administrative Court²⁶ criticized the underlining assumptions of this policy and ruled that people who are provided temporary protection should be allowed to work. According to Judge Amir:

I do not view it as either possible or reasonable to allow the stay of temporary protected persons without the ability to work for their basic subsistence. We are not dealing here with a tourist who arrives, and it may be assumed that he will arrive, with enough cash to fund his stay here. We are dealing with a person who fled an impoverished country, and arrived with nothing. Once the state believes—and this is its position as long as the collective protection is in place, that a protected person should not be detained and should not be deported—it is obligated also to provide a solution to the possibility of basic human subsistence of the petitioner, as long as the temporary protection continues. It is inconceivable that a person will be hungry for bread in Israel, regardless of his visa. It is inconceivable that the state will place a person in a situation in which he would be forced to commit crimes to subsist in the most basic sense of feeding himself and finding a roof over his head. I also do not believe that we should “shut our eyes” and say that such a person is prohibited

²⁴ The Committee for the Examination of the Problem of Migrant Workers, hearing held on March 2, 2010, p. 6. Translation from the Hebrew.

²⁵ Migrant Workers Law, 5751-1991, Art. 2.

²⁶ H CJ 35858/10 *Sayko v. Ministry of the Interior* [2010], p. 3.

from working, while at the same time we assume that he will work illegally, to support himself.

In November 2010, when it became clear that the numbers of new arrivals were not declining, a new phrase was added in bold letters to the “conditional release” visas issued to asylum seekers and people under temporary protection, stating, “This permit is not a work permit.” The addition of this sentence has already caused many asylum seekers to lose their jobs and, as a result, their housing and subsistence.

The prohibition on work and the lack of social assistance gravely affect the situation of women asylum seekers. Single women with young children are the most vulnerable. A few receive temporary housing in NGO-run shelters, but there are only a few shelters, each with limited space.

The Refugee Rights Clinic recently interviewed FM, a female Ethiopian asylum seeker who, for lack of shelter or means of support, was forced to agree to sexual relations with an Israeli man. She moved in with him and in January 2011, was seven months pregnant. She expressed her desire to leave this exploitative relationship, but felt compelled to stay because she cannot support herself without a work permit.

On November 28, 2010, the Israeli government approved a new plan to build a reception center in southern Israel, where asylum seekers will be obligated to reside during the processing of their claims. This center will provide for essential needs such as food and shelter. At the same time, the government noted that until the reception center opens, the prohibition on employment for asylum seekers will not be enforced. However, because the center is planned to house 8,000 asylum seekers, and there are currently 21,880 asylum seekers in the country, it is not clear how the asylum seekers not housed in the reception center will support themselves when the employment bar is reintroduced.

8. CONCLUSION

To meet its international obligations under CEDAW Articles 1, 2, 11, and 15, the State of Israel should:

1. Recognize gender-based violence as a legitimate ground for asylum under the 1951 Convention;
2. Recognize persecutory acts performed by non-state actors as “persecution” for the purposes of the 1951 Convention when the state of nationality or habitual residence is unwilling or unable to provide protection;
3. Add guidelines recognizing gender-based persecution to existing asylum regulations;
4. Train all RSD officers, interpreters, and any other officials who handle asylum seekers’ claims (including Detention Review Tribunal adjudicators) in gender-sensitive procedures and interviewing techniques;
5. Refrain from conditioning rehabilitation visas or any other status (*e.g.*, partnership-based status) on the waiver of an asylum application;
6. Allow trafficking victims a year of rehabilitation before being required to undergo the refugee status determination procedure; and
7. Recognize the right of asylum seekers to work, thereby enabling them to subsist with dignity.

**ORAM - Organization for
Refuge, Asylum and Migration**

39 Drumm Street, 4th Fl.
San Francisco, CA 94111, USA
Ph: 1-415-399-1701, Fax: 1-415-373-9191
email: info@oraminternational.org

www.oraminternational.org

**Tel Aviv University
Refugee Rights Clinic**

The Buchmann Law Faculty
Ramat Aviv, 69978 Israel
Ph: 972-3-6405264, Fax: 972-3-6407422
email: anatbd@post.tau.ac.il

www.law.tau.ac.il