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# Undocumented Migrants, Asylum Seekers and Refugees in Israel

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## Acknowledgements

This report was conducted under the auspices of the Centre for the Study of European Politics and Society (CSEPS) at Ben-Gurion University of the Negev, Beer-Sheva, and The Royal Institute for International Relations (EGMONT), Brussels. The author, Bruno Oliveira Martins, carried out his research in Israel within the framework of the EuroMeSCo Exchange Facility.

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## Author's Thanks

The author would like to express his gratitude to Lisa Anteby-Yemini (CNRS, IDEMEC, Université de Provence), Adriana Kemp (Department of Sociology, Tel Aviv University), Anat Ben-Dor (Refugees Rights Clinic, Faculty of Law, Tel Aviv University), Sergio Della Pergola (Jewish People Policy Planning Institute and Hebrew University of Jerusalem), Haim Yacobi (Bimkom and Ben-Gurion University of the Negev), Alfred Tovias (Leonard Davies Institute, Hebrew University of Jerusalem), Dani Filc (Physicians for Human Rights and Ben-Gurion University), Yehuda Ben Meir and Emily Landau (Institute for National Security Studies), Juan Gonzalez-Barba (Embassy of Spain in Israel), Jonathan Claridge (Delegation of the European Commission to the State of Israel), Michal Eshkenazy and Ayal Kantz (CSEPS – Ben-Gurion University of the Negev) and Joel Peters (Virginia Tech).

Many thanks also to Ilan Lonai, Lauren Rushton, and other members of Amnesty International – Israel Section for their co-operation and for organising interviews with undocumented African migrants in Tel Aviv.

Finally, a special thanks to Tobias Schumacher and Sharon Pardo for all their academic support and orientation.

## About the Author

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## Acronyms

<b>AI</b>	Amnesty International
<b>BPUfM</b>	Barcelona Process: Union For the Mediterranean
<b>CARIM</b>	Euro-Mediterranean Consortium for Applied Research in International Migration
<b>EC</b>	European Commission
<b>ENP</b>	European Neighbourhood Process
<b>EU</b>	European Union
<b>HRW</b>	Human Rights Watch
<b>IDF</b>	Israeli Defence Forces
<b>NGO</b>	Non-Governmental Organisation
<b>NSGB</b>	National Status Granting Board
<b>RSDP</b>	Refugee Status Determination Procedure
<b>TAIEX</b>	Technical Assistance and Information Exchange
<b>UNHCR</b>	United Nation High Commissioner for Refugees

## Executive Summary

In recent years, especially since 2006, the mass influx of African undocumented migrants, asylum seekers and refugees into Israel has presented a complex set of challenges to the country's vast experience in absorbing immigrants. This new migratory trend, which saw the arrival in Israel of more than 13 000 undocumented African migrants over the last three years, brought the Israeli migration reality more in line with the challenges currently faced by EU, while also revealing the country's difficulties in addressing this issue efficiently, as well as the inadequacy of its legal framework towards undocumented migrants.

The fact that the major migration phenomenon experienced by Israel has become increasingly similar to the EU's should help bring greater attention to this issue within EU-Israel relations. The timely coincidence between recent efforts to redraw the EU common approach to migration and Israel's revision of its legal framework concerning migration strengthens the argument for a deeper co-operation between the two parties, especially at a time when a new version of the EU-Israel Action Plan is being discussed.

In certain specific areas, the EU's experience in dealing with migration issues could provide Israel with useful practical information, whereas Israel's long tradition in absorbing immigrants could feed into European efforts to build a much-needed effective policy in what regards migration movements through its southern border. The regional dimension is thus also pivotal: dealing efficiently with this test-case issue (namely, that of African non-Jewish undocumented migrants, asylum seekers and refugees arriving in Israel) requires a co-ordinated effort between the country of departure (Egypt) and the country of destination (Israel). Against this backdrop, and with the Mediterranean as the geographic context in which this new route in trans-national migration operates, the EU would appear to provide the necessary framework and instruments to tackle this challenge, whether this framework emerges from an EU-Israel bilateral context or a BPUfM multilateral approach. The EU should effectively support closer Israeli-Egyptian co-operation under the BPUfM, namely by promoting inter-regional and Israel-Egypt cross-border programmes focused on this particular issue. Finally, the EU should lead international diplomacy efforts to press the Egyptian border police to stop its shootings of undocumented border crossers, as well as the Israeli Government in case of further developments regarding the approval of the new version of the Israeli "Prevention of Infiltration Law".

## General Introduction

Over the last three years, Israel's vast experience in absorbing immigrants has been challenged by a new migration phenomenon. Its growing dimension presents several problems to the State's integrative policies, which have traditionally had the Jewish context as their ideological framework of reference. This report analyses the recent flow of African, non-Jewish undocumented migrants, asylum seekers and refugees that have been arriving in Israel since the end of 2005, coming from several African countries *via* the Egyptian Sinai desert. The dynamics of this movement, the Israeli Government's responses to it, and the importance of addressing this issue under a broader EU/ENP framework are the main topics under discussion in this report. These will be developed under the following research question: according to the nature of the challenge faced by the Israeli Government and the European experience in dealing with similar phenomena, would this issue be most efficiently addressed in the existing bilateral institutional framework (EU-Israel bilateral relation and/or BPUfM)?

The issue of refugees in Israel has traditionally been framed within the context of the peace process with the Palestinians. Until 2006, the average number of asylum seekers in Israel did not exceed a few hundred per year. Migration flows in North Africa had Europe as their main target. Egypt also received thousands of East-Africans, coming mainly from Eritrea, Sudan, Nigeria, Somalia and Ivory Coast. After serious clashes between African refugees and the Egyptian authorities in Cairo in the last months of 2005, Israel became a more viable destination for these migrants. This led to the development of a new movement in the illegal immigration routes, with migrants departing from Egypt, being smuggled through the Sinai desert, before then reaching the long and largely unpopulated border between Israel and Egypt, much of which is physically open. Conflicts in their countries of origin, and a seeming lack of a coordinated Israeli response, led to a very significant influx that brought more than 13 000 African asylum seekers and illegal immigrants into Israel.

The difficulty of distinguishing between regular migrant workers in an illegal situation and classical asylum seekers escaping from real crisis scenarios is part of challenge faced by Israel in dealing with this issue. Against the backdrop of the history of the Jewish people, there appears to be a certain readiness to offer refugees special protection in Israel. However, a substantial rise in illegal immigrants could trigger several social and economic problems. Moreover, questions concerning the "Jewish" character of Israel may clearly also have an impact given that the vast majority of these migrants, refugees and asylum seekers are Muslim or Christians.

In this scenario, migration-related issues stand to play an important role in the context of EU-Israel bilateral relations, considering its relevance for both the EU and Israel. In some specific areas, the EU 'know-how' in dealing with illegal immigration and asylum issues could prove useful in providing Israel with practical information, whereas Israel's long tradition in absorbing immigrants could potentially feed into European efforts to build an effective policy as regards migration movements across its southern border, which make the Mediterranean the geographic context of this play. The regional dimension is thus also pivotal: dealing efficiently with this test-case issue (namely, that of African, non-Jewish undocumented migrants, asylum seekers and refugees arriving in Israel) requires a co-ordinated effort between the country of departure (Egypt) and the country of destination (Israel).

The Final Declaration of the BPUfM ministerial conference held in Marseille, 3-4 November 2008, recalled that the issue of migration "should be an integral part of the regional partnership and its related challenges, namely, legal migration, migration and development, and the fight against illegal migration", and should be addressed through a comprehensive, balanced and integrated approach. Some initiatives have begun to be implemented under this framework, including the launch of a new phase of the regional Euro-Med Migration Programme (2008-2011), a project aimed at strengthening Euro-Mediterranean cooperation in the management of migration, building-up the Mediterranean partners' capacity to provide solutions to the various forms of migration. A comprehensive EU-Israel approach to this specific case should bring efficiency in addressing this common challenge.

### *Legal definitions*

For the purpose of this report, the terms “asylum” and “refugee” are used in accordance with the EU definitions<sup>1</sup>:

**Asylum** is a form of protection given by a State on its territory, based on the principle of ‘non-refoulement’ and internationally or nationally recognised refugee rights. It is granted to a person who is unable to seek protection in his/her country of citizenship and/or residence, in particular for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

**Refugee** is a person who fulfils the requirements of Article 1(A) of the 1951 UN Convention relating to the Status of Refugees definition. Article 1(A) defines a refugee as any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The term “undocumented migration” has been adopted by the EU in its latest documents on migration, and, according to Carrera and Guild, has been gradually replacing the term “illegal migration”, which is:

“...no longer favoured in international circles where immigration is under discussion. The alternative terms, such as ‘irregular’ or ‘undocumented’ migration, are much less normatively charged and many international institutions consider that they enhance the possibilities for discussion.” (Carrera and Guild, 2008: 3)

<sup>1</sup> These definitions can be found in the European Commission's Glossary on Justice and Home Affairs, available at: [http://ec.europa.eu/justice\\_home/glossary/glossary\\_a\\_en.htm](http://ec.europa.eu/justice_home/glossary/glossary_a_en.htm).

## Background

By the end of 2005, Egypt led the ranking of important destinations and routes of African migration movements. Its geographic location made it the most obvious Mediterranean escape for East Africans coming from Eritrea, Sudan, Ethiopia, Somalia, Kenya, Cote d'Ivoire, and Chad, among others. The dramatic instability these countries face in economic, social, political, and military terms has caused a continuous massive movement of people seeking asylum, refugee status, or simply a better economic and social situation. In many cases, the social background of these undocumented migrants allows them to be perceived, on the one hand, as both refugees and asylum seekers, but also, on the other hand, as economic migrants searching for better life conditions in another place. Mixed flows like the ones here mentioned require accurate research on each individuals' historical and social background in order to address each particular situation in the most convenient and effective way.

In the last months of 2005, a very significant number of Sudanese refugees and asylum seekers, who had been protesting in Cairo against their living conditions in Egypt and against the United Nations High Commissioner for Refugees' (UNHCR) suspension of their Refugee Status Determination Process (RSDP), started a three-month stand-in in front of the UNHCR's office in the Egyptian capital. Permanently gathering over 2000 people during three months, the protest ended on 30 December, after severe actions by the Egyptian authorities that reportedly caused 28 deaths, including several children. Hundreds of demonstrators were imprisoned during the following weeks and in this period there were several reported cases of missing children<sup>2</sup>.

Academics and NGOs agree that these events in Cairo represented a turning point as regards the destination of African migration, re-directing instead towards Israel. Notwithstanding, even during the late 1990s and early 2000s there were already well-known cases of African undocumented migrants, asylum seekers and refugees arriving in Israel. In the 1990s, most African migrants in Israel originated from Nigeria and Ghana. Figures in Table 1 show that in the years 2004 and 2005 the phenomenon had a relatively modest dimension. These five national groups included almost all the reported cases of asylum seekers arriving in Israel during those two years.

TABLE 1 – Main groups of asylum seekers in Israel in 2004 and 2005

	Ivoriens	Congolese	Sierra Leoneans	Liberians	Ethiopians
2004	245	103	68	65	61
2005	271	109	73	69	50

Source: UNHCR (2008c) and HRW (2008: 11).

It could be argued that the Israeli legal framework was unprepared to deal with this specific kind of immigration because it had been established mainly with the purpose of favouring Jewish immigration into the country. As regards security concerns, the "Prevention of Infiltration Law", approved in 1954 and still in force, presumed that any national citizen of Lebanon, Egypt, Syria, Saudi Arabia, Trans-Jordan (including East Jerusalem and the West Bank), Iraq, or Yemen was an "infiltrator", facing sentences of up to five years in prison. Yet some decades later, two migration phenomena concurred to challenge this approach and change the Israeli social pattern. The first one is linked to the collapse of the Soviet Union: a massive movement of people coming from the ex-Soviet republics began to arrive in Israel, with an estimated one million having reached the country between 1989 and 2003<sup>3</sup>. The second one has its roots in the Israeli-Palestinian conflict: since the signing of the 1993 Oslo agreements, the number of Palestinians living and working within Israel's internationally-recognised borders decreased significantly, having been replaced in the labour market by around 300 000 Eastern Asians and Eastern Europeans, the great majority of whom were in an irregular situation.

In 2002, an Immigration Police was established as a result of the Rachlevsky Report, a document outlining recommendations towards a new economic plan for Israel<sup>4</sup>. The orientations included a very strong reduction of labour migrants and the establishment of an Immigration Authority, within which the Immigration Police would act. Although this authority was never established, the Immigration Police was created to implement the penal provisions of the programme<sup>5</sup>.

<sup>2</sup> A very detailed description of these events and their background can be found in Azzam (2006). For other relevant information and analysis, see Yasmine and Dibb (2008), Salih (2006), Harrell-Bond (2006), and Schafer (2006).

<sup>3</sup> In Jewish Virtual Library, "Immigration since 1948", available at:

[http://www.jewishvirtuallibrary.org/jsource/Immigration/Immigration\\_Since\\_1948.html](http://www.jewishvirtuallibrary.org/jsource/Immigration/Immigration_Since_1948.html)

<sup>4</sup> This Government commission, headed by Yuval Rachlevsky, examined the question of foreign workers in Israel and, among other provisions, recommended that the Government establish an authority by 2004 to concentrate all aspects of the issue, including deportations. The commission also recommended that 100,000 foreign workers who were in Israel without a visa should be deported by 2005. Vered Levy-Barzilai, "Unpromised Land", June 11, 2003, Haaretz.

<sup>5</sup> Some academics in Israel raise the hypothesis of the existence of a link between the entry into force of this deportation policy and the construction of the wall that physically separates Israel from the West Bank and Gaza. This equation would put migration policies under the broader framework of security. In fact, it may be argued that there is a 'discursive connection' between these timely coincident policies. From an Israeli point of view, these two facts allowed the conjugation of two 'desired scenarios': African undocumented workers are usually paid less than the Palestinian workers and their presence is not perceived as posing a security threat.

**TABLE 2 – Police records (apprehended cases) of foreign workers without permit deported from Israel 1995 – 2005 and in percentage of undocumented workers**

	Foreign workers without permit deported (thousands)	In percentage of total undocumented workers
1995	0.9	2
1996	0.9	1.3
1997	2.8	3.1
1998	4	3.8
1999	4.6	3.8
2000	0.7	0.5
2001	1.9	1.4
2002	5	4.1
2003	21	20.2
2004	17	9
2005	6.5	3.6

Source: Data collected by the CARIM, Robert Schuman Centre for Advanced Studies (European University Institute)<sup>6</sup>.

A deportation policy and the decision to drastically reduce labour immigration, although common to other countries and not exclusive to Israel, may be seen as partly reflecting the dilemmas faced by a country whenever there is a need to address specific issues with a demographic dimension. As Adriana Kemp points out:

“while the labour market mechanism has drawn on the de-politicisation of the role of the state in controlling labour migration through the privatisation of its regulatory functions into the hands of non-state intermediaries and employers, the deportation policy has engaged in a continuous politicisation of the phenomenon premised on the representation of labour migrants as an offence to state sovereignty and law and as a threat to the demographic balance of the Jewish nation-state.” (2004: 285)

Although these are crucial migration movements in Israel’s demographic history, these two cases differ from this report’s test-case (of non-Jewish, African undocumented migrants and asylum seekers) and present different challenges regarding Israel’s absorption capacity: on the one hand, the nationals of the ex-Soviet republics were (or claimed to be) Jews, or at least had a Jewish background, and the issue was therefore addressed as a case of *aliyah*<sup>7</sup>; while the Asian and Eastern Europeans were examples of classic economic migrants who were in an irregular situation. As with refugees, table 3 reflects the scarce importance of this issue in the Israeli political and social landscape during the 1990s.

<sup>6</sup> Table available at: <http://www.carim.org/index.php?areaid=4&contentid=59&table=1>

<sup>7</sup> Aliyah, (pl. aliyot) means “ascension” or “going up”; it refers to the arrival of Jews, as individuals or groups, from exile or the Diaspora, to live in Israel. Definition found in: <http://www.jewishagency.org/>.

<sup>8</sup> Table available at: <http://www.carim.org/index.php?areaid=4&contentid=59&table=1&tableid=123>

TABLE 3 – Refugees in Israel: 1993 - 2002

Year	Refugees
1993	-
1994	-
1995	-
1996	-
1997	-
1998	27
1999	128
2000	4075
2001	4168
2002	4180

Source: Data collected by the CARIM, Robert Schumann Centre for Advanced Studies (European University Institute<sup>8</sup>).

## Current Situation

According to a “Human Rights Watch” report from November 2008, since 2006, over 13,000 refugees, asylum seekers and other migrants have passed through Egypt and crossed the Sinai border into Israel, the majority having arrived in Israel since 2007 (HRW, 2008). They face serious risks posed by the Egyptian border police, whose guards, according to the same report, have killed at least 32 African migrants trying to cross into Israel between June 2007 and October 2008, whereas Israel has forcibly returned at least 139 border crossers to Egypt<sup>9</sup>.

Once returned to Egypt, migrants face military court trials and possible deportation to their countries of origin. The reasons presented by Egypt to justify its shooting policy are based on the threats presented by the organised Sinai-based criminal smuggling networks to national security and also on the arms smuggling into the Gaza Strip. The criminal activity in the Sinai desert is pivotal in the illegal immigration routes, which bring people from Cairo and other Egyptian cities to the 266 km border with Israel; the Sinai Bedouins’ *modus operandi* is very similar to that of other organised networks trafficking migrants from different parts of Africa to the Mediterranean shores, and then from there to Spain, Italy and France.

TABLE 4 – Asylum seekers in Israel: 2006 – 2008

	Asylum Seekers
2006	1411
2007	5559
2008*	6034

Source: UNHCR (2008c) and HRW (2008: 11).

\* Figures refer to the period January – September.

TABLE 5 – Asylum seekers in Israel from Sudan, Eritrea and Cote d’Ivoire: 2006 – 2008

	Asylum seekers in Israel from Sudan, Eritrea and Cote d’Ivoire		
	Sudan	Eritrea	Cote d’Ivoire
2006	271	28	146
2007	1688	1763	751
2008*	1755	2499	387

Source: UNHCR (2008c) and HRW (2008: 11)

\* Figures refer to the period January - September

### The “Population, Immigration and Border Crossings Authority”

In July 2008, after a long period of un-co-ordinated efforts in addressing the migration phenomenon, the Ministry of Interior established the “Population, Immigration and Border Crossings Authority”, gathering ten separate governmental bodies dealing with immigration. It replaced the Population Authority<sup>10</sup>, which had until then focused on matters such as attributing of residential status to would-be immigrants, and is now responsible for supervising all entries and departures from Israel. More relevant is its functional responsibility over the Immigration Police, which is in charge of apprehending illegal workers and of questioning infiltrators into Israel to determine whether they qualify for temporary refugee status.

The efficiency of this authority would be very relevant in correcting some of the most common problems faced by migrants who manage to cross the border. The 1954 Prevention of Infiltration Law, although created with a completely different target in mind, remains in force. In this scenario, people crossing the border illegally would be almost automatically considered infiltrators, and treated accordingly: i.e. arrested, taken by the IDF to prison fa-

<sup>9</sup> The HRW Report presents a detailed list of 32 casualties, as well as other relevant data collected through interviews with Israeli and Egyptian officials, and also with 69 migrants.

<sup>10</sup> According to the Israeli press, the new body has 1,500 to 1,800 employees, compared to the 700 previously working in the Population Authority. Some 130 Interior Ministry employees have already been trained to screen the refugees as soon as they cross the border. Information available at: <http://www.jpost.com/servlet/Satellite?pagename=JPost%2FJPArticle%2FShowFull&cid=1215330967812>.

cilities, and interrogated. Until 2007, there was no pre-determined limit period of detention – “infiltrators” would wait imprisoned in Ketziot or in any other of the several improvised detention camps while their situation was evaluated. Given that these facilities had not been created specifically to cater for such cases, they lack some basic conditions and are very often overloaded<sup>11</sup> – a situation revealing Israel’s lack of preparation to deal with the continuous arrival of migrants.

From a legalistic viewpoint, the unjustified detention of an asylum seeker violates International Law, especially Article 26 of the 1951 Refugee Convention, which states:

“1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions, other than those which are necessary, and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.”

In practical terms, until 2007, migrants would be detained even before being given the opportunity to apply for refugee status. But, as was noted in the above-mentioned HRW report, a refugee rights NGOs’ successful court case against the Prevention of Infiltration Law and against its use in these cases managed to prevent Israel’s indefinite detention of undocumented migrants arriving illegally in the country (HRW, 2008: 74).

### *Immediate Co-ordinated Returns*

Since August 2008, several cases of a process called “immediate co-ordinated return” have been reported. This can be seen as a euphemistic variation of the term “hot return”, which refers to a compulsory and almost automatic expulsion to Egypt of someone trying to illegally enter Israel *via* the Sinai desert. The procedure runs contrary to International Law, specifically to the 1951 UN Convention relating to the Status of Refugees, to which Israel is a signatory. These recent cases are expected to be subject to an Israeli High Court decision in the coming months of 2009. The illegality of these actions rests on the dangers faced by migrants upon their return to Egypt and in the possible subsequent deportation to their country of origin, where threats may be even greater. The non-refoulement principle is one of the pillars of the international refugee protection system and is defined in the 1951 Refugee Convention’s Article 33:

“No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of the territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

Moreover, in the 1994 case of *Al-Tai’l et al. vs. Minister of Interior*, the non-refoulement principle was explicitly declared by the Supreme Court as being a principal of customary international law<sup>12</sup>. But, as will be referred to in the next point, this issue was not yet fully assimilated by the Government and the recent cases from August 2008 would appear to demonstrate this fact.

### *The Refugee Status Determination Procedure*

The Refugee Status Determination Procedure (RSDP) is conducted by the UNHCR office in Israel and, in a second phase, by a special governmental body. Initially, an asylum seeker requests an individual interview and presents a written submission to the UNHCR Correspondent in Israel. The process is then submitted to the National Status Granting Board (NSGB), which announces the final decision. As noted by Kagan and Ben-Dor (2008: 38),

<sup>11</sup> In interviews held with Israeli NGOs and lawyers, it was mentioned that in these situations, the IDF’s and other authorities’ lack of preparation to address the issue would lead to extreme decisions such as driving migrants to the city centre of Beer-Sheva, where they would be left with no further explanation. The number of detained persons very often escalates far beyond the capacity of Ketziot and other improvised detention centres: in June and July 2008, there were more than 1000 persons only in Ketziot.  
<sup>12</sup> HC 4702/94, 49 (3) P.D., 843, 844.

rejected applicants can appeal, but any such appeals will be reviewed using the very same procedure: first the UNHCR, followed by the NSGB. There is no channel of appeal to a superior instance. This RSDP is usually long and normally ends with unsatisfactory results for the refugee status seekers. Data collected by State Controller Micha Lindenstrauss, quoted in the HRW report (2008: 73-74) and presented to the Knesset on 20 May 2008, reveal a very low percentage of successful applications.

TABLE 6 – Asylum applications and recognition of refugee status: 2005 – 2007

	Applications	Refugee status conceded	Percentage
2005	909	11	1,21%
2006	1348	6	0,44%
2007*	3000	3	0,1%

Source: UNHCR (2008c) and HRW (2008: 73-74).

\*Data referring to the period January-September 2007, published by the UNHCR (2008a).

If granted official recognition, refugees receive an A5 residence visa, which is renewable and includes the right to work, as well as access to public healthcare. If an asylum seeker has had their process analysed by the UNHCR but has not received the refugee status, he/she would be given a B1 visa, which permits residence in the country as a temporary worker. These temporary worker residence visas were also granted by Israel to other special national groups. Citizens from Sierra Leone received a special protection that ended in 2006, temporary protection of Liberian citizens ended in March 2007, and that attributed to Ivorians terminated in 31 December 2008<sup>13</sup>. In addition, Israel granted temporary residence visas to 600 Darfuris and work permits to 2000 Eritreans. It could be argued that this casuistic decision is contrary to the principles of equality and non-discrimination, which demand equal treatment for similar cases. As is accurately noted by Kagan and Ben-Dor:

“this humanitarian gesture is still based on a group rationale rather than on individual screening” (2008: 44).

#### *North of Hadera, South of Gedera*

Since February 2008, Israel prohibited new migrants, as well as those whose original residency documents had expired, from living or working in the greater Tel Aviv area. The majority had settled in this area partly due to the greater possibility of finding jobs, and partly because of the presence of the UNHCR's office, but also certainly in view of the presence of NGOs and other institutions providing services to the asylum seeker community. Migrants were from then on forced to live outside a zone that included the Tel Aviv surroundings, therefore restricted to an area “North of Hadera and South of Gedera”<sup>14</sup>. Notwithstanding, in the end of November 2008, the Interior Ministry decided to expel from Eilat (in the South of the Israel) around 2,000 asylum seekers from Sudan and Eritrea, and prohibited them from working if they did not hold valid work permits<sup>15</sup>.

All these tough issues, together with a general sense of collective public responsibility towards refugees<sup>16</sup>, are creating interesting dynamics of social solidarity that provide the migrant community with some basic needs: namely, food, a place to sleep, assistance with documentation, legal advice and advocacy, lessons in elementary Hebrew and English, among others. These services are provided on a voluntary basis by institutions like the African Refugee Development Centre, Israel Section of Amnesty International, “Fugee Friday” Project, Hotline for Migrant Workers, Refugee Rights Clinic (Tel Aviv University), Christian Embassy, Physicians for Human Rights, as well as groups of students from Ben-Gurion University of the Negev, in Beer Sheva<sup>17</sup>.

<sup>13</sup> Data collected by Kagan and Ben-Dor (2008: 38).

<sup>14</sup> See map 2 in Annex.

<sup>15</sup> Haaretz, 26 November 2008. Available at: <http://www.haaretz.com/hasen/spages/1040962.html>.

<sup>16</sup> An illustrative example of the public support for the Sudanese cause in Israel and the arguments presented to sustain it is found in a Haaretz editorial from 30 June 2008, called “Darfur is Our Problem Too”, especially when it states that “Too soon we have forgotten the suffering that is the lot of the persecuted. Perhaps we have grown accustomed to concern ourselves only with our own plight after absorbing Jewish refugees since the founding of the state. Today, when we are more prosperous, when the reservoir of Jewish refugees has dried up, there is fortunately no reason to scan the globe for people who could be considered Jewish and coax them to come here. And there is no reason to remain indifferent to the suffering of non-Jews who could contribute to the State of Israel as much as any Jew.”

<sup>17</sup> Another interesting example is the recent special budget proposed by the Tel Aviv Municipality to promote migrants' integration in the city, with special provisions targeted at providing shelters, Hebrew courses and information meetings at the Mesila Centre.

## The Legal Framework in Israel

The difficulty of distinguishing regular migrant workers in an illegal situation from classical asylum seekers who are fleeing from real crisis scenarios is an element of Israel's ongoing struggle to deal with this issue. The national legislative *corpus* on immigration was developed and first implemented in a completely different context. Throughout the six decades of the State, two main founding notions prevailed:

- To implement, and sociologically and demographically develop, a state for the Jewish people, creating all the conditions needed to facilitate the entry into Israel of all Jews;
- To prevent the “infiltration” (to use the official term) of those who could potentially harm or threaten the State. Naturally, this does not imply the absence of non-Jewish immigration, but is nonetheless an expression of the transversal security concern in Israeli policies and society<sup>18</sup>.

Against this backdrop, the main legal documents can be classified, according to Shoshana Strauss (2006), into two groups: constitutional texts; and law, regulations and administrative texts<sup>19</sup>.

- Constitutional Texts
  1. Proclamation of Independence (1948)
  2. Basic Law: Human Dignity and Liberty (1992)
  3. Employment: Equal Opportunities (1988)
  4. Law of return (1950)
- Law, Regulations and Administrative texts
  1. Citizenship Law (1952)
  2. Entry in Israel Law (1952)
  3. The Citizenship and Entry in Israel Law (temporary provision 2003)
  4. The Population Registration Law (1956)
  5. The Foreign Workers Law (1991)
  6. The Absorption Basket Law (1994)

This internal *corpus* is complemented by international law dispositions, namely international treaties to which the State of Israel is a signatory part. For the purposes of this report, the most relevant Conventions are the:

- Convention Relating to the Status of Refugees (1951)
- Convention Relating to the Status of Refugees' Protocol (1967)
- Geneva Convention Relating to the Protection of Civilian Persons in Time of War (4th Geneva Convention) (1949)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975)
- International Covenant on Civil and Political Rights (1996)

As has been argued throughout this report, this system did not appear to promote a fair and efficient resolution of all the challenges posed by this new migratory phenomenon. Seeing as the ratio of the 1954 Prevention of Infiltration Law no longer seems to apply to the present situation, the Knesset is currently discussing a new legal framework to replace the 1954 law.

<sup>18</sup> Although not addressing this issue directly, Adriana Kemp provides a good conceptual insight into the security approach to Israeli migration policies when she mentions the policy of “racialisation of migrant workers in Israel as the result of political and social regulation forces conducted first and foremost by the state as a means of ‘crisis management’ in times of social and political unrest” (Kemp 2004).

<sup>19</sup> This first set of official documents (Constitutional texts) is the backbone of the Israeli legal system and introduces the fundamental idea of creating a safe homeland for the Jewish people. As regards demography, this principle has consequences in terms of citizenship given that it offers different possibilities to immigrants according to their religion. Entry into Israel of non-Jews is regulated by the second group of legal texts (Law, Regulations and Administrative texts) and is dominated by security concerns, i.e. preventing the “infiltration” of all those who could threaten the State or its people.

### *The New Prevention of Infiltration Law*

In 2008, the Israeli Government proposed a new version of the “Prevention of Infiltration Law”, which is also known as the “Vilna’i Law” (in reference to the name of the Deputy Minister of Defence, Matan Vilna’i). It was approved on the first reading in the Knesset in May 2008<sup>20</sup>; yet in order to enter into force it must now to be approved in two more readings.

The draft law’s Explanatory Notes recognised that “after examining the circumstances of infiltration, it was found that most of the infiltrators to Israel during the last years were not security related”. Notwithstanding, it also explicitly states the underlying assumption “that a person who infiltrates through the legal border of the State does so with the intention to do harm”. Its most important premises are:

- Criminal sanction of 5 years imprisonment for any person illegally entering Israel, which rises to 7 years for any person entering Israel illegally who is a citizen or resident of an enemy State<sup>21</sup>;
- Explicit introduction of the immediate return of any such person to the country or territory from which he/she arrived in Israel, conducted by the IDF within 72 hours from the time the suspicion of infiltration first arose, without requiring the officer to take that person’s possible asylum claims adequately into account;
- Allowing the detention of all suspects of infiltration, further stating that these persons should not be released if the Israeli security authorities suspect of any activities in his country or area of residence that might endanger the security of the State of Israel or its citizens, even if there is no evidence that the person in question was involved in these activities<sup>22</sup>.

As was previously stated in this report, several elements of this proposed law go against important International Conventions, of which Israel is a Signatory Part. The basic principle of non-refoulement, as mentioned before, forbids the forced return of refugees to situations that might threaten their lives. The reported cases of killings by the Egyptian border authorities effectively endanger migrants’ lives and, in accordance with the non-refoulement principle, should prevent any automatic forced deportation from Israel. Among other controversial issues, the labelling of refugees and asylum seekers as “infiltrators” has been contested by NGOs. It is possible that the final version of the proposed law will receive several inputs and thus be subject to some amendments. Its main dispositions are polemic and seem to contradict the bedrock principles present in international law regarding the protection of refugees and asylum seekers.

<sup>20</sup> The proposal was approved on 19 May 2008 by a vote of 21 Members of the Parliament to 1.

<sup>21</sup> Enemy States are Iran, Afghanistan, Lebanon, Libya, Sudan, Iraq, Pakistan and Yemen, and also, for the purpose of this law, those who come from the Gaza Strip.

<sup>22</sup> For more information on the proposed law, details and background, see Refugee Rights Clinic (2008).

## Undocumented Migrants in the Context of EU-Israel Relations

Despite the peculiarities of the flow of African undocumented migrants to have arrived in Israel since 2006, this phenomenon is easily comparable to the flows of African undocumented migrants attempting to reach Southern EU member States on a daily basis. Migration is a high-ranking topic in the EU's priorities vis-à-vis the Mediterranean, this being the geographic context of the flows that target the EU as their final destination. Since 2006, Israel has faced challenges that are increasingly similar to those confronted by the EU since the 1990s, and it is thus logical to suggest that co-ordination between Israel and the EU would be valuable for both parties.

The issue of migration has been addressed within the framework of the Barcelona Process since its conceptualisation in 1995, but also in the ENP bilateral relations, and more recently, in the context of the "Barcelona Process: Union for Mediterranean" (BPUfM). The central role of this issue in the EU's Mediterranean agenda is identifiable in official declarations and documents, of which the most recent example is the Final Declaration of the BPUfM Ministerial Conference, held in Marseille on 3 and 4 November 2008. Its provisions on migration are stated as follows:

"Ministers recalled that the issue of migration should be an integral part of the regional partnership and its related challenges, namely, legal migration, migration and development, and the fight against illegal migration, as laid down in the agreed conclusions of the 1st Euro-Mediterranean Ministerial Meeting on Migration, Albufeira, 18-19 November 2007, which need to be addressed through a comprehensive, balanced and integrated approach. In this regard, some initiatives have begun to be implemented this year with the launching of the regional Euro-Med Migration II Programme (2008-2011)."

"They underline the commitment to facilitate the legal movement of individuals. They stress that promoting orderly-managed legal migration in the interest of all parties concerned, fighting illegal migration, and fostering links between migration and development are issues of common interest which should be addressed through a comprehensive, balanced and integrated approach."

The benefits of a structured and solid co-operation between the EU and its neighbours in the field of migration are obvious, and its importance has grown as the European-targeted migration flows intensify. Nevertheless, it can be argued that the lack of a communitarian policy towards border control, immigrant absorption procedures, and asylum, among others, prevent the EU to achieve the objectives it has set for itself. There thus remains large room for improvement, and both the European Commission and the Council presented in the second semester of 2008 a new set of communications and political pacts aimed at addressing this issue in a broader and more co-ordinated manner.

In June 2008, the EC Communication "A Common immigration policy for Europe: Principles, actions and tools" and the Policy Plan "Asylum – an integrated approach to protection across the EU", which were adopted in parallel and then presented to the Member States, the European Parliament, as well as all other relevant stakeholders, proposed a set of policy measures to ensure the further development of a comprehensive EU immigration policy, according to the terms defined by the European Council in December 2006. These policy actions are based on a bulk of 10 common principles, grouped around the links that exist between immigration and the ideas of prosperity, solidarity, and security.

The proposed goal is to feed these policy measures over the course of 2009 into a new five-year Programme in the Justice, Freedom and Security area. As is pointed out in the document, enhanced co-ordination on immigration governance is to be reached through reinforced coherence between the EU member states' policies and measures, by outlining a new methodology and by establishing a monitoring and evaluation mechanism that would include an annual political assessment followed by recommendations from the Spring European Council, on the basis of a Commission's report on the migration situation both at the European and the national level.

On 15 and 16 October 2008, the European Council adopted in Brussels the *European Pact on Immigration and Asylum*, which was proposed by the French EU Presidency and aims at expressing the EU and member states' commitment to conducting a "fair, effective and consistent policy for dealing with the challenges and opportunities which migration represents." According to the Council Conclusions, the Pact will form the basis, both for the EU as a whole and the individual member states, of a common im-

migration and asylum policy, guided by the principles of solidarity between EU member states and co-operation with third countries<sup>23</sup>. The pact proposes five commitments, which would require important changes to the legal frameworks of member states and to EU Treaties. These are to:

- Organise legal immigration in line with the priorities, needs and reception capabilities determined by each member state, and to encourage integration;
- Control illegal immigration, particularly by ensuring the return of illegal immigrants to their country of origin or to a transit country;
- Make border controls more effective;
- Build a “Europe of Asylum”;
- Create a comprehensive partnership with countries of origin and transit, encouraging synergy between migration and development.

To achieve these general goals, the Pact proposes a set of detailed policy actions. Some among these are of relevance to the example presented in this report: the Pact states that, to “build a close partnership encouraging the synergy between migration and development”, the European Council agrees, among other measures, to:

“firmly implement the partnership between the European Union and Africa, agreed in Lisbon in December 2007, the conclusions of the first Euro-Mediterranean ministerial meeting on migration, held in Albufeira in November 2007, and the Rabat action plan, and to that end call on the second Euro-African ministerial conference on migration and development in Paris in autumn 2008 to decide on practical measures; (...)”.

The first Euro-Mediterranean Ministerial meeting on migration was held during the Portuguese EU Presidency in the second semester of 2007 and proposed a set of policy measures grouped under the themes Legal Migration, Migration and Development, and Illegal Migration<sup>24</sup>. These are the three pillars of the EUROMED Migration Project, whose second phase (2008 – 2011) is currently in force<sup>25</sup> and is based on the 8th and 9th Euro-Mediterranean Conference of Ministers of Foreign Affairs (Tampere, 27-28 November 2006 and Lisbon, 5-6 November 2007), which addressed the need to strengthen the management of migratory flows in a comprehensive, integrated, and balanced way, and to increase co-operation in the three specific fields of migration just outlined.

This set of recent political and legal documents provide an overview of the EU approach to migration and its current efforts to increase the efficiency of its policies. But the EU bilateral relations developed within the framework of the ENP are also key element in adequately addressing migration movements. As regards Israel, the issue is explicitly referred to in the EU-Israel Action Plan, under the section *Co-operation in Justice and Home Affairs*. It states the following:

**“Migration issues (including legal and illegal migration and asylum)**

**1. Effective management of migration flows:**

- Exchange of information and dialogue concerning (legal) migration;
- Exchange of information and dialogue concerning integration of migrants: best practices, evaluation, joint studies;
- Discuss the issues of management of migration flows, and cooperate to increase the effectiveness of measures designed to prevent or curb the flow of illegal immigration, including co-operation with the Border Police;
- Exchange of information concerning illegal immigration, including transit migration;
- Observation and analysis of migratory flows; participation in the EU-ROMED migration research network;

<sup>23</sup> For a detailed analysis of the Pact and policy recommendation, focusing on the balance between freedom and security, the EC's role, the democratic deficit of certain measures, among other issues, see Carrera and Guild (2008).

<sup>24</sup> The conclusions of this meeting are available at: <http://www.sef.pt/documentos/56/AGREEDCONCLUSIONS8NOVEMBER.pdf>

<sup>25</sup> More information on EUROMED Migration II can be found at: <http://www.euromed-migration.eu/>.

- Identify the conditions to invite Israel as participant/observer in the activities organised in the framework of EU programmes on migration issues (ARGO, AENEAS).

### Asylum

- Exchange information and best practices in the field of asylum policy.

Israel was among the first countries to adopt an ENP Action Plan – a document providing the basic framework under which EU-Israel bilateral co-operation is developed in the context of the ENP<sup>26</sup>. It is divided into 10 sectoral sub-committees:

- Political dialogue;
- Industry, trade and services;
- Internal market;
- Justice and legal matters;
- Research, innovation, infosoc, education and culture;
- Agriculture and fisheries;
- Transport, energy, environment;
- Customs, taxation;
- Social and migration affairs;
- Economic and financial matters.

By the time this report was finalised, further discussions were held on strengthening co-operation. This included debate about a successor to the current Action Plan, in line with the outcomes of the EU-Israel Association Council, June 2008, which agreed on an upgrade of the EU-Israel bilateral relation. This idea was reinforced in the General Affairs and External Relations Council of 8-9 December, where the Council reaffirmed “its determination to upgrade the level and intensity of its bilateral relations with Israel within the context of the adoption of the new instrument which will replace the current Action Plan”. It also referred that this building-up should be “based on the shared values of both parties, and particularly on democracy, respect for human rights, the rule of law and fundamental freedoms, good governance and international humanitarian law”.

The EU-Israel bilateral achievements in the field of migration have not been very substantial. The June 2008 TAIEX<sup>27</sup> Seminar on Migration was the most relevant action developed under the framework of the ENP, gathering EU and Israeli experts to discuss this common challenge and to propose new approaches that could benefit both parties. Some provisions of the Action Plan are currently not updated, especially as regards the EU migration-related Programmes. Currently, the major project is the above-mentioned EUROMED Migration II, and the growing awareness about the Israeli current reality should prove important.

Finally, it is worth mentioning that further co-operation can be achieved in different contexts. In October 2008, in the framework of the EuropeAid Thematic Programme of Cooperation with Third Countries on Migration and Asylum, the Israeli organisation, Center for International Migration and Integration Association, was awarded a grant following its application with a project named “Migration Management Capacity Building in Israel: Supporting Effective Mechanisms to Combat Trafficking for Forced Labour and Protect Refugees”. The current situation of undocumented migration in Israel provides the country with an opportunity to extend its bilateral co-operation with the EU to also encompass this issue, in the broader context of the agreed upgrading of the EU-Israel relations.

<sup>26</sup> Sharon Pardo presents a new model to more adequately address the quite particular EU-Israel relation, which he terms the “Euro-Israeli Partnership”. He proposes an innovative institutional framework aimed at aligning Israel with the EU, while remaining below the level of full EU membership. Although originally targeting the EU-Israel bilateral relation, the model's institutional flexibility is likely to allow it to be used in other EU bilateral relations. See Pardo (2008).

<sup>27</sup> TAIEX (Technical Assistance and Information Exchange) is an instrument of the Directorate-General Enlargement of the European Commission that helps countries to approximate, apply and enforce EU legislation. Demand-driven, it channels requests for assistance and contributes towards the delivery of appropriate tailor-made expertise to address problems at short notice. It was initially set up in 1996 to provide short-term, targeted technical assistance to the candidate countries. Israel is the leading country in the ENP-South area in terms of both the number of requests submitted and success rates.

## Conclusion and Recommendations

In recent years, especially since 2006, the mass influx of African undocumented migrants, asylum seekers and refugees into Israel has presented the country with a complex set of challenges. The fact that the major migratory phenomenon currently faced by Israel has become increasingly similar to the migration reality characterising the EU should help bring this issue to the fore within EU-Israel relations. Israel's quest to overcome this challenge stands to benefit from the EU's experience and know-how, especially considering that South European countries have been exposed to this phenomenon since the early 1990s. The timely coincidence between recent efforts to redraw the EU common approach to migration and Israel's own revision of the legal framework concerning migration, strengthen the argument for a deeper co-operation between the two parties.

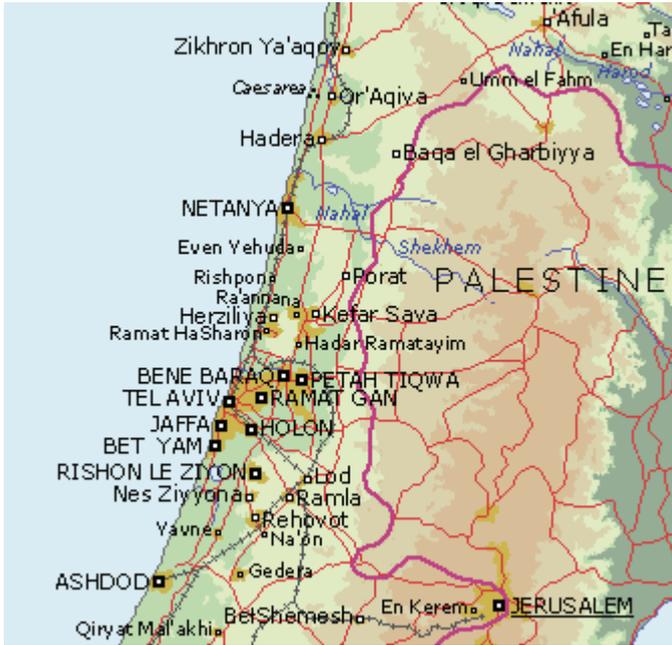
The text of the current Action Plan identifies the effective management of migration flows in the context of the ENP as a main goal, particularly through enhanced co-operation in certain specific fields. Further co-operation could be useful in certain areas, including in international police coordination, data exchange, the identification of human trafficking routes, and the harmonisation of legal frameworks – as well as a special focus on the enforcement of International Law. Considering the fact that relations between the EU and Israel have a strong political dimension, EU diplomatic efforts directed at Israeli migration policies, especially the Prevention of Infiltration Law (Vilna'i Law) currently under discussion, could prove important in aligning this policy with international standards. International pressure should also be put on Egyptian officials in order to put an immediate end to the shooting of migrants along the EU/Israel Sinai border.

As regards EU-Israel bilateral relations, in accordance with that previously mentioned, TAIEX initiatives held in the framework of the ENP (including seminars, study tours, and other joint activities) offer a valuable tool for the exchange of experience and information, thus expanding the possibility of co-operation, and even harmonisation, at a later stage. As argued earlier in this report, in its basic premises, this mixed flow of migrants does not differ from that challenging South Europe. The EU's multilayered and complex set of structures for dialogue and co-operation with its Southern Mediterranean neighbours provide a wide range of tools and political platforms that should be used to their full advantage in a bid to address migration flows in a co-ordinated manner. Whereas the BPUfM enables a multilateral dialogue, the ENP framework offers possibilities for bilateral relations that should also be explored in tackling this issue in a harmonised way. Existing instruments permit this and the present situation demands it with increasing pertinence. Against this backdrop, this paper proposes the following policy recommendations:

- Considering Israel's long tradition in absorbing immigrants and the EU's migration reality, migration should become a priority topic in EU-Israeli permanent political dialogue and bilateral co-operation.
- The specific issue of undocumented African migrants and asylum seekers in Israel should be addressed within an EU framework – be it through a EU-Israel bilateral, or a BPUfM multilateral approach.
- The topic of undocumented migration should be granted greater attention in the regular EU-Israel political dialogue, especially in the upcoming new version of the EU-Israel Action Plan, in recognition of this topic's increasing importance in Israeli society.
- The EU should effectively support a better Israel-Egyptian co-operation under the multilateral framework offered by the BPUM, namely by promoting interregional and Israel-Egypt cross-border programmes focusing on this particular issue.
- The EU should lead international diplomatic efforts to press the Egyptian border police to halt its shootings of undocumented border crossers, a practice that has reportedly caused at least 32 casualties since 2006.
- In case of any further developments as regards the approval of the "Prevention of Infiltration Law" currently under discussion, the EU should apply diplomatic pressure to assure the respect for international law.

Map 1 – Map of Israel and its border with Egyptian Sinai desert

# Annex



Map 2 – Map of Israel (detail) locating the cities of Hadera and Gedera



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