

0.06%

The numbers speak for themselves: The Israeli asylum process

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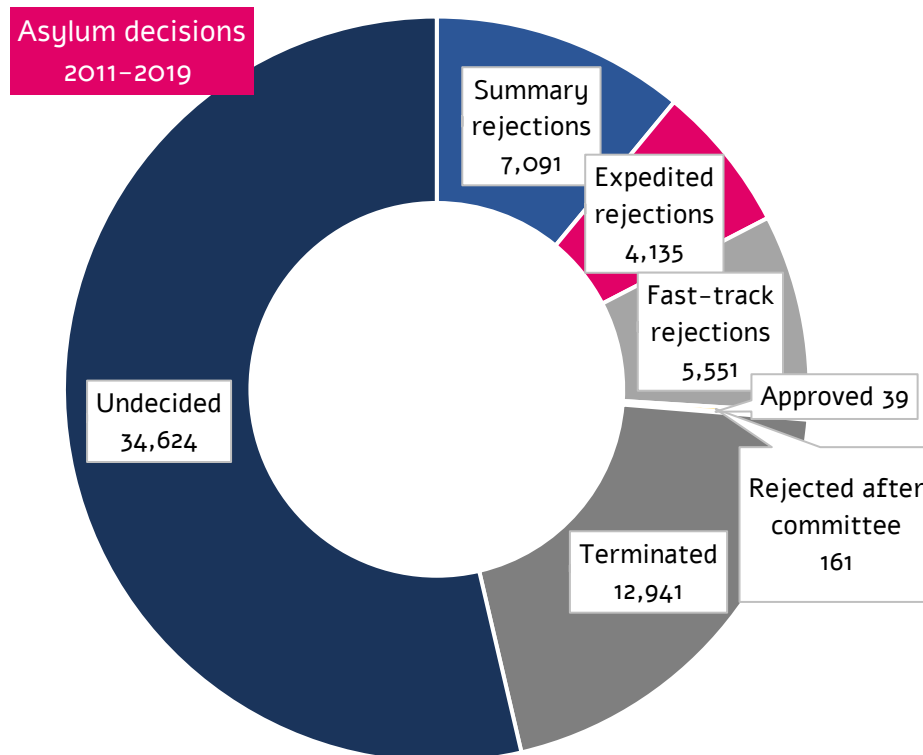


Abstract

0.06% is the recognition rate of refugees in Israel.¹ Why is this number so low? Much has been written about the narrow interpretation of the Refugee Convention adopted by the Israeli Ministry of Interior and the overall policy toward asylum seekers in Israel. In this report, we seek to present the quantitative data and try to explain how, bureaucratically and substantively, over 99% of asylum claims are rejected or not handled. As we shall see, most requests are rejected in speedy proceedings and thousands of other applications never receive a determination.

Throughout the report, we will examine the Refugee Status Determination (RSD) Regulation, providing an explanation about articles in the Regulation and how they are applied in practice, and what this can teach us about handling of asylum claims under a regulation that is intended to guide the

process of examining them, while in reality, mostly provides tools for rejecting applications.



HIAS is an international Jewish non-profit organization that has been providing aid and protection to refugees for over 135 years. HIAS Israel operates a program that provides pro-bono legal representation to asylum seekers wishing to gain legal status in Israel. Phone: 03-6911322 Fax: 03-6091336 Email: info-il@hias.org Website <http://www.hias.org.il>

¹ Out of the total number of asylum requests filed in Israel between 2011–2019. The quantitative data in the report was gathered from information provided by the Ministry of Interior over the years in response to Freedom of Information requests, filed by the Refugee Rights Clinic at Tel Aviv University, by Amnesty International-Israel and by HIAS. When examining the data, some inconsistencies emerged between the various sources, with

different numbers being provided for the same statistic. For the purpose of this report, we chose numbers that appeared in a number of sources, or data that was provided at the latest date. It should be mentioned that only a small share of the information is published at the initiative of the Immigration Authority in its quarterly reports.

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Introduction

The Regulation on Refugee Status Determination (henceforth, the RSD Regulation),² is a procedure stipulated by the Ministry of Interior, regulating the examination of asylum requests and granting of legal status to those who are recognized as refugees following the RSD process. The regulation was first promulgated in 2011, after the handling of asylum applications was transferred from the UN High Commissioner for Refugees (UNHCR) to the Ministry of Interior; it has since been updated several times.

In the absence of a law regularizing the status of refugees, the Regulation stems from the authority of the Minister of Interior to grant legal status in Israel,³ and the State's commitment to the 1951 Convention Relating to the Status of Refugees and the additional 1967 Protocol Relating to the Status of Refugees (henceforth “the Refugee Convention”). Thus, the Regulation stipulates that the handling of asylum applications will be done in line with the law in Israel, mindful of Israel's obligations under the Refugee Convention. The regulation further specifies that those responsible for assessing asylum claims can seek guidance in the UNHCR handbook on the matter. Furthermore, the regulation codifies that it is superseded by the fundamental

² The Refugee Status Determination Regulation, no. 5.2.0012.

³ This authority is codified in article 2 of the 1952 Entry to Israel Law.

principle of international law that a person must not be deported to a place where his life would be at risk (non-refoulement).⁴ The processing of asylum claims is carried out by the RSD Unit, which unlike other units of the Population, Borders and Immigration Authority (PIBA, or the Immigration Authority) that examine applications for legal status (for example, through marriage), is under the Directorate of Enforcement and Foreigners, whose main ongoing task is to detain and deport foreigners. The RSD Unit decides whether to reject the request in an expedited proceeding, or transfer it to the Advisory Committee on Refugees, which is an inter-ministerial committee. The recommendations of that committee are then forwarded to the Minister of Interior for his decision.

⁴ Israeli court rulings have recognized Israel's obligation to abide by the customary international law prohibition on deporting a person to a place where his life or liberty would be in danger, or where he may be exposed to torture, even if he is not persecuted based on one of the persecution grounds codified in the Refugee Convention. See High Court of Justice (HCJ) ruling 5190/94 Salah Ahmad Qadem al-Tay and others vs. the Minister of Interior, 1995. To date, no regulation has been stipulated to prevent removal from Israel under the non-refoulement principle. In Appeal

Recommendations⁵

- Asylum applications should be accepted at all Population Authority bureaus in the country.
- An explanation of the asylum procedure should be given where non-refoulement visas are renewed.
- Increase the number of employees in the RSD unit.
- Establish fixed deadlines for each stage of the RSD process.
- Ensure access to refugee rights for asylum seekers whose application is pending for more than 9 months.
- Fast track proceedings should be constructed to recognize (not just reject) persecuted groups.
- Empower professional staff to make refugee status determinations instead of the Minister of Interior.
- Review of the RSD unit's performance and refugee recognition rate on a regular basis.

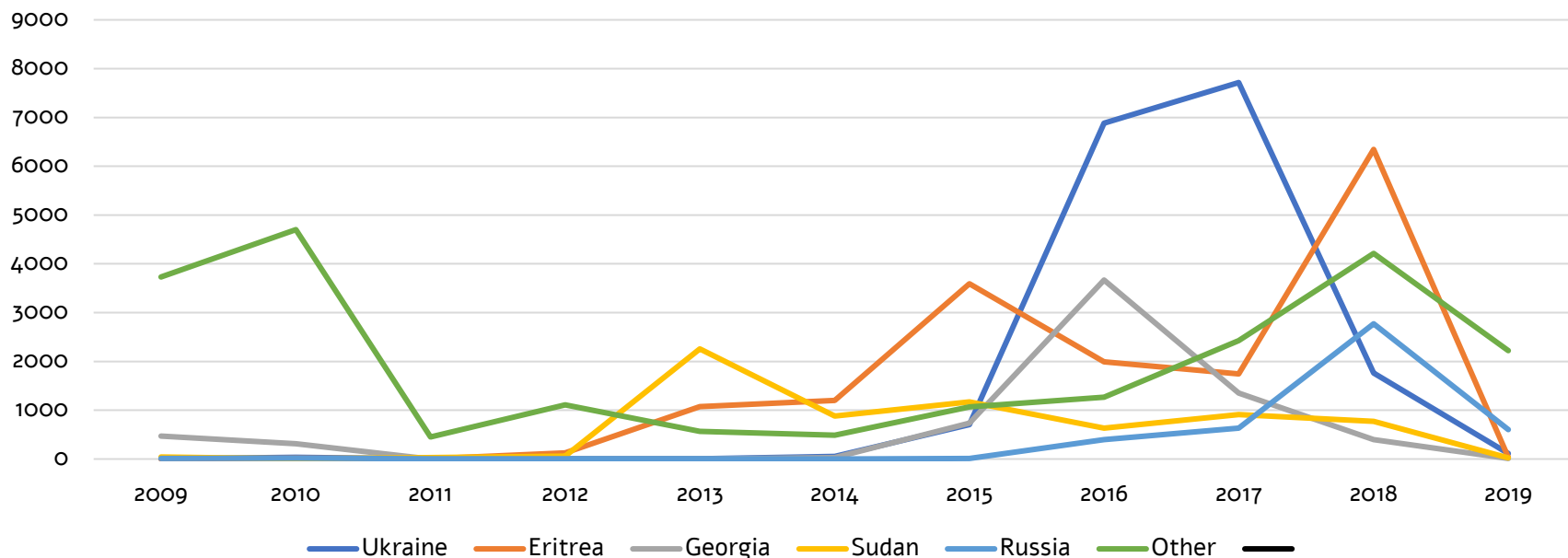
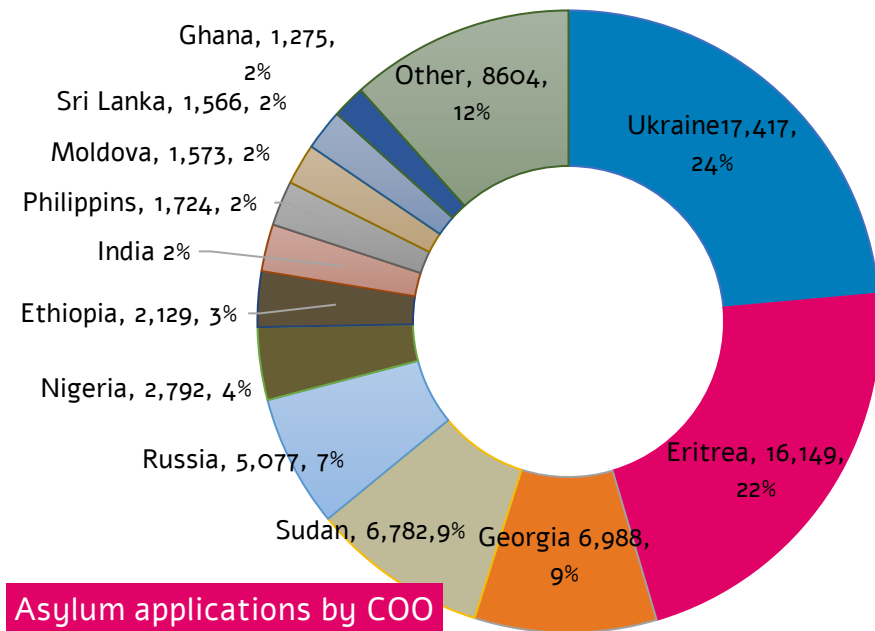
(Jerusalem Tribunal) 2045/15 Jane Doe (Congo) vs. the Ministry of Interior – the Population, Borders and Immigration Authority, issued on December 12, 2017, it was determined that such requests should be filed to the attorney general of the Population and Immigration Authority.

⁵ Most of the recommendations are based on the State Comptroller's recommendations from his 2018 report and on international standards.

The Filing of Asylum Applications

To date, 73,889 asylum applications have been submitted to the RSD unit. Most of the applications were submitted by citizens of Eritrea, Ukraine, Georgia and Sudan. 70% of applicants were men, 30% women, and 31 applications were submitted by minors.

The regulation begins by instructing that asylum seekers file their claims in the offices of the Immigration Authority (article 1(A)). This appears to be a basic requirement, but it was often an insurmountable roadblock.



Initially, until 2012, no forms to file asylum claims existed, and the Immigration Authority refused to accept asylum applications of Eritrean and Sudanese nationals, claiming that they enjoy ‘group protection’ as it is.⁶ As a result, many Eritreans and Sudanese believed that since they were interviewed upon their entry to Israel, and were released from detention with a stay permit, this meant that they had already effectively filed an asylum claim. Some also registered themselves as asylum seekers with the UNHCR upon entering Israel, thinking that this registration means filing an asylum claim. This argument was accepted by the courts, but the Ministry of Interior continues to insist that those who did not file the forms, did not apply for asylum.⁷

In 2013, the Ministry of Interior began allowing Sudanese and Eritreans to file asylum claims, but did not advertise its change in policy. The information about this and the importance of filing asylum claims was disseminated by the UNHCR, aid organizations, attorneys, and word-of-mouth within the community.⁸ These organizations also assisted

asylum seekers in filing the claims, since many struggled to fill out the eight-page form in English on their own.⁹

The requirement to file the asylum claim in the offices of the Immigration Authority made this task impossible for long stretches of time,¹⁰ due to long lines outside of the office of the RSD Unit. This office, located in Bnei Brak,¹¹ is the only office in the country in which asylum claims can be filed, while other requests for obtaining legal status are handled by Ministry of Interior offices throughout the country, based on the applicant’s place of residence.

Additionally, those who understood that they should file an asylum claim and how to do so, knew that the likelihood of being recognized as a refugee is close to zero anyway. The RSD Regulation does not grant rights to those who have filed an asylum claim and are awaiting a response, other than protection from deportation and a temporary stay permit (2(A)(5)). This is the same permit that effectively allows asylum seekers to work, but does not grant them any rights beyond this, such as social rights or health care. Eritreans and

⁶ Appeal 8908/11 Aspo vs. the Ministry of Interior. Published in Nevo on July 17, 2012.

⁷ Appeal (Jerusalem Tribunal) 2150-16. Issued on November 15, 2017.

⁸ Appeal (Tel Aviv Tribunal) 1279/16 A. G. vs. the Ministry of Interior (published in Nevo, November 6, 2016).

⁹ [Apply for Asylum in Israel](#), Israeli Government Portal.

¹⁰ In Appeal (Tel Aviv Tribunal) 1734/17 (published in Nevo, June 20, 2017), the tribunal adjudicator described arriving to the entrance of the office and

seeing the long lines to file asylum claims, which led her to recognize that there is a practical obstacle to filing asylum claims. Currently, the lines have gotten significantly shorter for those wishing to file their claim.

¹¹ Asylum claims could be filed from immigration detention, or in the office in 53 Salame Street, Tel Aviv. Over the past year, the filing of asylum claims was moved to a specialized office in Bnei Brak. The office in Salameh now accepts only requests of Ukrainian and Georgian nationals, which are then rejected in a summary proceeding. See more on this below.

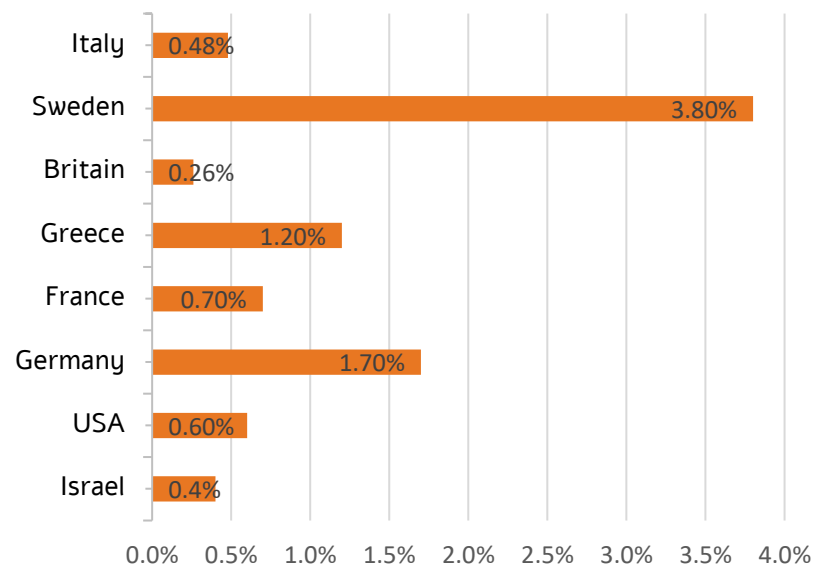
Sudanese enjoying group protection receive the same legal status and rights even if they do not file an asylum claim. As a result, asylum seekers from Eritrea and Sudan had no incentive to file asylum claims.

The rise in asylum applications began when the State decided to apply sanctions against those who did not file such claims, making Eritreans and Sudanese aware of the importance of doing so. Therefore, we can witness a sharp rise in the filing of asylum claims in 2013, when Israel first allowed Eritreans and Sudanese to file asylum claims, in 2015, when Eritreans and Sudanese were held in the Holot detention facility (where aid organizations assisted them in filing the forms),¹² and in 2018, when Israel began applying the policy of deportation to third countries. As will be described below, after 2015, there was a sharp rise in filing of asylum applications by Georgians and Ukrainians.

It should be mentioned that alongside the countries mentioned whose citizens filed asylum claims, Israel is home to Palestinian asylum seekers who are barred from filing claims due to the interpretation of the Refugee Convention

by the Ministry of Interior, which argues that the Convention excludes Palestinians.¹³

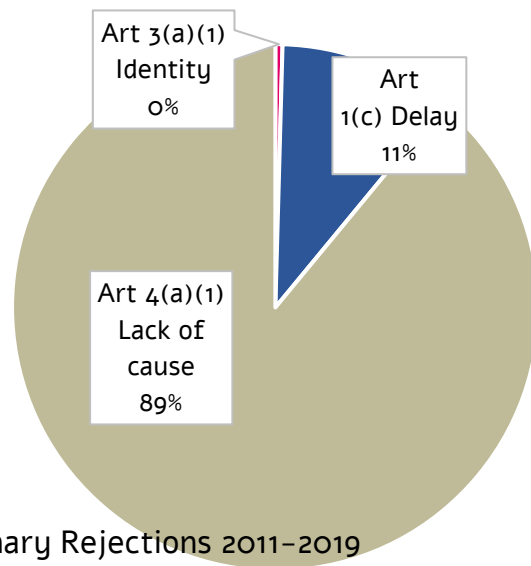
Percentage of refugees within the country's population in developed countries



¹² Between 2014-2017, when the Holot facility was operational, 44% of asylum requests by Eritrean and Sudanese nationals were filed from within the Holot and Saharonim detention facilities (5,349 of the 12,120 asylum applications filed by Sudanese and Eritrean nationals during those years).

¹³ Administrative Appeal (Tel Aviv administrative court) 6666-04-16 John Doe vs. the RSD Unit (published in Nevo, July 7, 2016). This issue was tackled in a number of High Court proceedings, but the Court has yet to decide on the matter. See HIAS report "Palestinian LGBT Asylum Seekers," 2019.

Summary Rejection of Asylum Requests



A significant share of the requests, about 42%, are summarily rejected. This statistic is concerning and not in line with Israeli court rulings that stipulated the need to take great care when summarily rejecting asylum applications. In these rulings, the courts recognized the danger entailed in carelessly rejecting an asylum application that may lead to the deportation of a person to a place where his life would be

at risk, without properly examining those threats. Therefore, the courts have ruled that asylum applications can be summarily rejected only in “extreme and extraordinary cases.”¹⁴ The guidelines of the UNHCR also state that summary rejections of asylum applications should only occur when it is clear that it is based on lies or lacks any grounds.¹⁵

RSD Unit employees summarily reject asylum applications, without examining their merit, or conducting an in-depth interview with the applicant, and without bringing the case before the inter-ministerial committee, tasked with examining the applications. The RSD Regulation provides no less than three different ways to summarily reject asylum applications, which we will detail in this chapter.

Summary Rejection Due to Delay

Article 1(C) of the RSD Regulation stipulates that even prior to examining any claim that a person may face danger in her country of origin, the officer at the RSD Unit is entitled to reject the application due to a “delay in filing,” if it was filed over a year since the asylum applicant entered Israel. The purpose of the article is to prevent the filing of false claims to

¹⁴ Administrative Appeal 13/1440 Chima vs. the State of Israel – Ministry of Interior, paragraph 40 (published in Nevo, August 7, 2013), and see also Administrative Appeal 8675/11 Tadesa vs. the RSD Unit (published in Nevo, May 14, 2012)

¹⁵ UN High Commissioner for Refugees (UNHCR), UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation,

April 2019, COM (2016) 467, available at:

<https://www.refworld.org/docid/5cb597a27.html>

See also: UN High Commissioner for Refugees (UNHCR), *Note on International Protection*, 7 July 1999, A/AC.96/914, available at:

<https://www.refworld.org/docid/3ae68d98b.html>

prolong one's stay in Israel, and court rulings found that a late filing of a claim can impugn its credibility.¹⁶ However, scholars of refugee law find that time limits that prevent access to asylum proceedings disproportionately harm the most vulnerable among asylum seekers, those with the least knowledge and information about the process, those lacking legal representation, or those coping with trauma or disabilities, which are often linked to their escape from their country of origin.¹⁷ Therefore, the UNHCR stipulated that such time limits should not be an automatic barrier to examining filed asylum claims.¹⁸

The article was not applied to Eritreans and Sudanese living under group protection until late 2015, when more of them began filing asylum claims (see above) and the Ministry of Interior suddenly decided to begin applying it. It should be mentioned that the Sudanese and Eritreans entered Israel until 2012, and therefore, almost all asylum claims that were filed in 2015, were filed over a year since their entry to Israel.

The Ministry of Interior used this article in the Regulation to reject 1,620 applications between 2015-2016.

In a ruling on this matter, the Appeals Tribunal decided in favor of the petitioners, deciding that in light of the policy adopted toward Sudanese and Eritreans, which previously prevented them from filing asylum applications, the State must not reject their asylum applications due to the one-year limit, without any prior warning.¹⁹ Following the verdict, the Ministry of Interior halted the practice of rejecting new applications filed by Eritreans and Sudanese based on this article, but did not automatically re-open all the applications that had been rejected based on this article.

Only after HIAS filed an appeal about the matter did the Ministry of Interior announce it would establish a mechanism that would re-examine the rejected applications.²⁰ Thus, most of the requests were reopened, but in the meantime, 348 asylum seekers whose asylum

¹⁶ Administrative Appeal 7854/12 Jane Doe vs. the Ministry of Interior (published in Nevo, August 25, 2015).

¹⁷ UN High Commissioner for Refugees (UNHCR), *Global Consultations on International Protection/Third Track: Access to Procedures - 'Safe Third Countries', 'Safe Countries of Origin' and 'Time Limits'*, 1 June 2001, available at: <http://www.refworld.org/docid/3b39a152d.html>

¹⁸ Excom Conclusions, No. 15 (XXX) – 1979, para (i), available at: <http://www.unhcr.org/3ae68c960.html>

¹⁹ See Appeal (Tel Aviv Tribunal) 1279/16 A.G. vs. the Ministry of Interior (published in Nevo, November 6, 2016).

²⁰ Administrative appeal (Jerusalem Court) 57376-01-18 the African Refugee Development Center and HIAS Israel vs. the Ministry of Interior (unpublished, issued on February 11, 2018).

applications had been rejected left Israel before their applications were ever examined.²¹

Summary Rejection Due to Lack of Credibility Regarding the Identity of the Applicant

The first stage in examining an asylum application is an identification interview, during which the applicant must “reasonably prove” his identity.²² Article 3(A)1 of the Regulation stipulates that a person can be summarily rejected if following the interview “a suspicion arose that the foreign subject is not who he claimed to be, or is not the subject of a country that he declared to be his country of nationality.” Rejection of applications under this article can stem, for example, from asylum seekers living in a border area between two countries, and not being able to speak the language of his country of nationality. In other cases, asylum seekers claim to be from a country whose nationals enjoy group protection, while they are not actually nationals of that country, to obtain this protection. For example, Ethiopians persecuted in their country were afraid that their asylum

claims would be rejected, so they declared themselves to be Eritrean, to obtain the group protection that Eritrean nationals enjoy. In addition, some Eritreans were unable to prove their nationality and the Ministry of Interior decided by default that they are Ethiopians, although they were not asked anything about Ethiopia to ascertain the nationality ascribed to them.

Israeli courts have recognized that individuals fleeing their country usually arrive without identifying documents and evidence to prove their claims,²³ and stated that the burden of proof with regards to questions of identity should not be “beyond every reasonable doubt or even the balance of probability... it is enough that person provides evidence at the administrative threshold, which appears to support the reasonable version that he presents.”²⁴ Nonetheless, courts ruled that the applicant must make an effort to provide evidence to support his claims.²⁵

²¹ From a Freedom of Information response by the ministry of interior, dated April 4, 2019.

²² Administrative Appeal 396629-12-11 Desta vs. the Ministry of Interior (published in Nevo, October 24, 2012).

²³ Appeal 8870/11 Gonzales vs. the Ministry of Interior (published in Nevo, April 25, 2013).

²⁴ Administrative Appeal 8902-11-10 (Central District) Jonas Melasa vs. the Ministry of Interior (September 11, 2011).

²⁵ Administrative Appeal (Beer Sheva Court) 54173-09-12 Gabra vs. the Ministry of Interior (published in Nevo, December 6, 2012).

Rejection Under Article 4(A) of the Regulation – Lack of Rationale

After the identification interview, the asylum application is briefly examined, as part of a basic interview. During this interview, the applicant must prove that his asylum application is grounded in one of the rationales set in the Refugee Convention, meaning that he is persecuted in his homeland on account of his race, religion, nationality, membership in a particular social group, or his political opinions, and cannot avail himself of protection in his country.²⁶

Article 4(A)1 of the RSD Regulation stipulates that an application can be summarily rejected after the basic interview, if the interviewer believes that the “claims and facts at the heart of the application, even if proven in their entirety, do not align with any of the grounds set forth in the Refugee Convention.” According to an Israeli court ruling “the authority of the clerk in the initial interview is not to assess the credibility of the asylum claim, but merely to examine whether there is any chance, even if small, that the application will be accepted if all its claims are found to be truthful.”²⁷ The court ruling and the Regulation itself

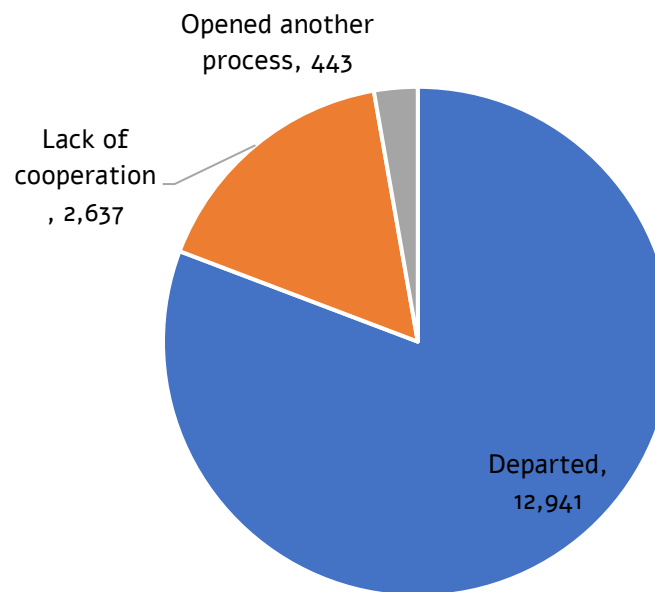
²⁶ Article 1(A)2 of the 1951 Refugee Convention. Signed in Israel in 1951 and ratified in 1954.

²⁷ Administrative Appeal (Central District Court) 38490-01-11 Karanje vs. the Ministry of Interior (published in Nevo, January 1, 2011).

recognize that summary rejection due to lack of rationale is intended to be used only when the story of the applicant does not provide any grounds for asylum.²⁸

Terminated Asylum Applications

Additional applications that are not examined are those terminated due to technical reasons, when the Immigration Authority believes that the applicant has abandoned his claim. This usually occurs for one of these three reasons:



Terminated applications 2011–2019

²⁸ Appeal 1440/13 Chima vs. the State of Israel – Ministry of Interior (published in Nevo, August 7, 2013).

Termination of the Application due to Departure from Israel

Every year, thousands of asylum seekers depart Israel, and as a result, their asylum applications are terminated. Thus, in 2015, 3,381 asylum seekers departed, in 2016, 3,246 departed, in 2017, 3,375 departed, and in 2018, 2,667 departed. While the Immigration Authority sees them as individuals who abandoned their asylum claim and left “voluntarily,” aid organizations refer to the departure of Eritrean and Sudanese asylum seekers as “the silent deportation,” due to the various pressures brought to bear on them, which compel them to leave Israel. This includes legislation applied against those who have entered Israel through irregular border crossings (“infiltrated”), which does not exclude those who have applied for asylum. These pressures also manifested in the jailing of asylum seekers in Saharonim Prison and later their detention in the Holot Facility, which according to the Minister of Interior at the time, Eli Yishai, was intended to “make their lives miserable.”²⁹

Beginning in 2017, Israel began applying the Deposit Law, which forces asylum seekers to hand over 20 percent of their

salaries to a deposit, which they can only redeem if they leave Israel. In addition, the plan to forcibly deport asylum seekers to Uganda and Rwanda, which after legal proceedings turned out to not be feasible, also encouraged people to leave Israel. In addition, the absence of permanent legal status, lack of rights and their labeling as “infiltrators” all pushed asylum seekers to depart Israel. Legal cases against these sanctions argued that the State is violating its obligations under the Refugee Convention by pressuring asylum seekers to give up the protection from deportation that is offered to them in Israel, and is coercing them to leave.³⁰ In addition, the petitioners argued that these pressures are not effective, since most asylum seekers wish to depart to safe countries that are willing to host them, but Canada and the United States are allowing resettlement only in limited numbers, while departure to Europe is possible only through family reunification.³¹ It should also be noted that Prime Minister Netanyahu signed in 2018 the “UN deal” which could have led to the departure of about half of the asylum seekers in Israel to safe countries, but a day after the agreement was signed, he backtracked and reneged on the deal.³²

²⁹ Omri Ephraim, “[Yishai: Next phase – arresting Eritrean, Sudanese migrants](#),” *Ynet News*, August 16, 2012.

³⁰ Appeal for a temporary injunction in HCJ case 2445/18 the Hotline for Refugees and Migrants vs. the Prime Minister.

³¹ See the appellant’s argument in the (still pending) HCJ case against the Deposit Law: HCJ 2293/17 Gergeshat and others vs. the Knesset of Israel (published in Nevo, March 13, 2017).

³² See our report, “[Our Resistance against the Deportation](#),” HIAS, 2018. (Hebrew)

Lack of Cooperation on the Part of the Asylum Seeker

“Lack of cooperation,” which leads to a rejection of asylum claims, occurs mostly when asylum seekers do not appear for interviews at the appointed time. An asylum seeker can wait many years after filing his application, only to suddenly receive an invitation by the phone or post mail for an interview that is to be held only a few days later. Many times, interviews are held only hours after the set time, and some are canceled at the last minute due to overload of work or absence of a translator.³³ However, if the asylum seeker does not appear at the time of the interview, her asylum application is immediately terminated. On this matter, Israeli courts have ruled that when a request to reopen a case is filed, the Ministry of Interior must examine the circumstances that prevented the asylum seeker from arriving to the interview.³⁴

Initiating another Legal Proceeding

Courts have accepted the argument of the Ministry of Interior that when an asylum seeker claims the right to stay in Israel for multiple reason (for example, due to an asylum claim but also a domestic partnership with an Israeli), he

must file his applications in parallel, and not subsequent to one another, to prolong his stay.³⁵

However, asylum seekers who wished to act in accordance with the court rulings, and file in parallel to their asylum claim an additional application for legal status based on other grounds, were told to terminate their asylum request. Many times, applicants were forced to resort to legal proceedings due to this practice, following which the Immigration Authority acquiesced and agreed to examine them in parallel, but it appears that the court’s ruling has not been properly articulated to PIBA employees who continue to make this demand.

Rejection in an Expedited Proceeding

If the asylum application is not summarily rejected, the applicant undergoes an extensive interview. If, following the interview, the RSD Unit clerk believes that “the applicant is not credible, his claims are not well-grounded or the fear that the asylum seeker displays is not well-founded, and therefore the request does not meet the factual or minimal legal

³³ Response from the director of the RSD Unit to HIAS from January 13, 2019.

³⁴ Appeal (Tel Aviv Tribunal) 3864/16 A. A. vs. the Ministry of Interior - Population and Immigration Authority (January 16, 2017).

³⁵ Appeal 3899/13 Ministry of Interior vs. Mehra (published in Nevo, May 21, 2014).

requirements for receiving asylum,” he can direct the request to be rejected in an expedited proceeding.

Although in principle the asylum seeker needs to prove her well-founded fear, due to the challenges in proving this, as described above, an approach adopted globally is to divide the burden of proof between the asylum applicant and the person examining it.³⁶ Israeli courts have accepted this principle of shared responsibility, and determined that the threshold of proof required of an asylum seeker is that there is “reasonable probability” that her version of events is true.”³⁷

Despite this ruling, it is apparent that the RSD Unit looks for information to reject the application and not information supporting it. In addition, most asylum applications are rejected due to “lack of credibility.” A report published by the Hotline for Refugees and Migrants critiqued the manner in which the Ministry of Interior conducts interviews and assesses the credibility of asylum seekers. The report describes how interviews are designed to trip up the asylum seekers, focusing on small details not relevant to the heart of

the claim, which no person should be expected to remember.³⁸

When the interviewer believes after the extensive interview that the application should be rejected through the expedited proceeding, the file is transferred with his recommendation to the head of the inter-ministerial Committee, which forwards its recommendation to the director of the Immigration Authority who makes the final decision.

Data shows that almost all recommendations for rejecting asylum applications in the expedited proceeding are accepted by the director, who approves them in batches comprised of a number of asylum seekers, without providing any reasoning.

Thus, the chairman of the Committee in effect makes the determination on most asylum claims, and he enjoys wide discretion to reject them without transferring them to the Advisory Committee members.

Who is the chairman of the Committee? According to the RSD Regulation, he or she must be a former judge or someone capable of assuming the position of a district judge, and not a State employee. For years, the chairman of the

³⁶ See article 196 in the UNHCR Guidelines.

³⁷ Appeal 8870/11 Gonzales vs. the Ministry of Interior (published in Nevo, April 25, 2013).

³⁸ Hotline for Refugees and Migrants, “[Falling on Deaf Ears: Asylum Proceedings in Israel](#),” October 2018, p. 16.

Committee was Adv. Avi Himi, an attorney who practiced criminal law. He quit his position in 2015. Following his resignation, the Committee did not have a chairman until March 2016, when Adv. Zion Amir, also a criminal lawyer, was appointed to the position. A petition was filed against his appointment, arguing that he does not possess the necessary expertise in refugee law, and that he does not have enough time to carry out his duties, since he continues to run a law firm. During the hearing, it was revealed that Adv. Amir worked less than a quarter of the hours he was supposed to have dedicated to his position, as set forth by the Ministry of Interior.³⁹ The court rejected the petition after the Ministry of Interior announced that Adv. Himi has re-assumed his position, and will serve as a co-chairman, along with Adv. Amir. The minister of interior claimed that appointing a second chairman was intended to speed up the processing of asylum applications, due to the Committee's work load. In the Ministry of Interior's response to the petition, they described Himi's re-appointment as the establishment of "two committees" that will double the speed of processing, but in reality, only one Committee operates, and it now has two chairmen. Since February 2019, Adv. Himi also serves as the

Head of Israel's Bar Association, after defeating Adv. Amir who ran for the same position.

Out of the asylum applications rejected in expedited proceedings, about 3,000 are of Eritreans who were rejected based on a legal opinion of the Ministry of Interior according to which defection from the Eritrean military does not indicate political persecution. Following legal proceedings concerning this matter,⁴⁰ the Attorney General instructed the Immigration Authority to reexamine this position, and since then, the examination of asylum applications based on this ground was frozen and the claimants have not received an answer.⁴¹

On July 7, 2019, the Ministry of Interior announced to the court that it has updated the guidelines for examining such applications, and decided to reexamine all asylum applications rejected based on the legal opinion concerning defection from the Eritrean military. It also announced it will

³⁹ HCJ 37376/16 Tomer Varsha Law Office vs. the Minister of Interior. Published in Nevo, February 22, 2017.

⁴⁰ Appeal (Jerusalem Tribunal) 1010-14 Mesegena vs. the Ministry of Interior – The Population and Immigration Authority (published in Nevo,

September 4, 2016), Administrative Appeal 12154-04-18 State of Israel vs. John Doe.

⁴¹ Lee Yaron, "[Israel Examines Whether Desertion From Eritrean Army Is Grounds for Asylum](#)," *Haaretz*, January 2, 2019.

begin examining about 10,000 asylum applications of Eritreans whose handling was put on hold.⁴²

Rejection in Fast-Track Proceedings

In mid-2015, a sharp rise was recorded in the number of Ukrainian and Georgian nationals who entered Israel with a tourist visa and filed asylum claims. This can be explained by the combination of fighting in these countries and Russian involvement there, which displaced people from their homes, plunging them into poverty; the ability to easily reach Israel without a pre-approved visa; and the involvement of actors publicizing incorrect information about the ability to legally work in Israel.⁴³ As a result, between 2015-2019, these nationals filed 23,348 asylum applications. The Ministry of Interior deemed these applications to be idle ones, and added article 5.1 to the Regulation, allowing a fast-track rejection of these applications based on a legal opinion of the Ministry of Foreign Affairs, which found that these countries are safe, as long as the applications do not provide additional reasons for asylum, other than the general situation in those countries.⁴⁴

⁴² Administrative Appeal 12154-04-18, the State of Israel vs. John Doe, update from July 7, 2019.

⁴³ Hotline for Refugee and Migrants, "[Knocking on the Gates](#): The Deficient Access to Israel's Asylum System due to the Rise in the Number of Ukrainian and Georgian Applicants," September 2017 (Hebrew).

In line with this regulation, 5,551 applications were rejected, and the number of asylum applications filed by nationals of those countries dropped sharply.

Examination of Applications in the Complete Proceeding by the Advisory Committee on Refugees

Asylum applications that are not summarily rejected, whether outright or in the expedited proceeding, are forwarded for the review of the Advisory Committee on Refugees. This is, essentially, the appropriate route for a thorough, full and careful examination of asylum requests,⁴⁵ but only a small share of the applications pass through this route. The composition of the Committee is described in the article concerning definitions in the Regulation and is comprised of a representative of the Ministry of Foreign Affairs, a representative of the Ministry of Justice, and a representative of the Population and Immigration Authority, and chaired by the chairman described above. The representatives are not permanent, and the Committee meets only once a month to discuss about eight cases each time.

⁴⁴ "[The Implementation of an Expedited Proceeding on Asylum Applications of Ukrainian Subjects](#)," Immigration Authority, October 15, 2017. (Hebrew)

⁴⁵ See fn 17 above.

The Committee receives the recommendation of the RSD Unit and its role is to formulate, based on the RSD Unit's input, a recommendation to the minister of interior, whether to recognize the applicant as a refugee. Between 2011-2019, only 1.2% of applications that were decided were discussed by the committee.

Duration of Handling Requests

The applications decided in 2019 were pending for an average of 28.1 months, over two years. Along with the various mechanisms set out in the procedure for rapid rejection of applications, the processing of applications that are not rejected is particularly lengthy, and thus 34,624 asylum applications submitted from 2011 to date have not yet been decided –more than half the applications submitted. Requests that can be rejected in expedited proceedings take precedence in handling, and the remaining applications are pushed back and subject to a number of bottlenecks: 33 interviewers working in the RSD unit, the committee chair and the committee itself, and finally the minister of interior who is the only one authorized to grant asylum applications. Alongside the various mechanisms set in the Regulation for a quick rejection of applications, the handling of applications

that are not rejected outright or in an expedited proceeding take a particularly long time.

The Regulation does not set timetables for handling applications, except the recommended time for moving the request to the Committee after the in-depth interview (two months). By comparison, in the European Union (EU), the

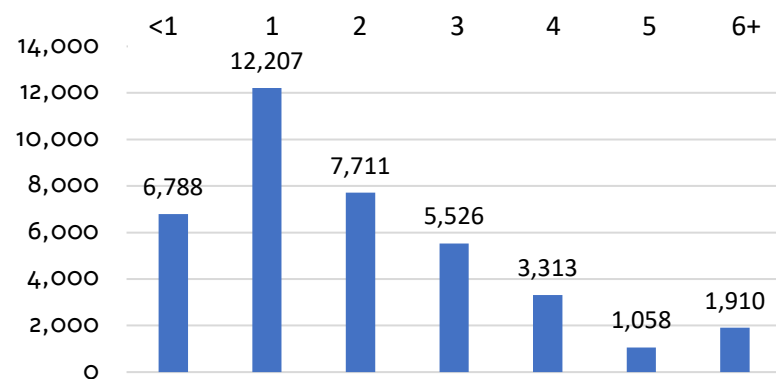
	2014	2015	2016	2017	2018	2019
Meetings	12	5	5	9	9	10
Cases discussed	78	24	24	59	53	72
Positive recommendations	5	11	5	1	3	2
Negative recommendations	0	0	9	48	32	20

directive on handling asylum requests instructs that asylum applications be handled within six months, at the most, except for extraordinary situations, in which they are to be handled within 21 months at the most. Some countries within the EU and outside of it have set even stricter and shorter timetables.⁴⁶ In the United States, the law directs inspecting asylum applications within 180 days of its filing,⁴⁷ and in

⁴⁶ [European Parliament And Council Directive 2013/32/EU of 26 June 2013, laying down common procedures for granting and withdrawing international protection](#)

⁴⁷ The Immigration and Nationality Act (INA), Section 208(d)(5)

practice the requests are adjudicated within six months on average,⁴⁸ while in Canada, application must receive a determination within eight months.⁴⁹ In Germany, claims are handled within 2.3 months on average,⁵⁰ in France three months,⁵¹ and in Greece six months. In many countries, any delay in handling beyond six months, grants various rights such as a work permit and social rights.⁵²



Pending applications (by years)

By comparison to those countries, the handling of asylum applications in Israel, except those summarily rejected, is particularly slow, as 82% of the requests that are still pending

(38,513 of the requests that were filed since 2009), have been awaiting a determination for over a year, and approximately two thousand have been awaiting a determination for over six years. The Israeli Supreme Court critiqued this drawn-out handling of requests, while at the same time, the Ministry of Interior applies various sanctions against asylum seekers whose applications await a determination (such as incarceration in Saharonim Prison, detention in the Holot facility, the Deposit Law). In February 2015, as part of proceedings in a petition to the HCJ against one of the amendments to the Anti-Infiltration Law, the minister of interior committed to examining all pending asylum applications of Sudanese and Eritrean nationals within one year.⁵³ However, as described in the Comptroller's report, until April 2017, over two years after this commitment was made, the Ministry of Interior completed the handling of only 28% of these requests.

⁴⁸ <http://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-process>.

⁴⁹ From the [website](http://www.cic.gc.ca/english/departement/media/backgrounders/2012/2012-11-30c.asp) of the Canadian government: <http://www.cic.gc.ca/english/departement/media/backgrounders/2012/2012-11-30c.asp>

⁵⁰ <http://www.asylumineurope.org/reports/country/germany>

⁵¹ <http://www.asylumineurope.org/reports/country/france>

⁵² In Israel, asylum seekers receive a permit under article 2(A)(5) of the Entry to Israel Law, which states that this permit is not a work permit.

Asylum seekers are allowed to work through an arrangement put in place following an appeal to the HCJ (6312/10), but in addition to various taxes, asylum seekers must pay 20% of their pre-tax income to a "deposit," which they receive only once they leave Israel or receive refugee status. The employers of asylum seekers have to pay a "foreign worker levy" of 20% of their salaries, and an additional 16% into the same deposit. In addition, asylum seekers are not entitled to tax credits, social rights or national health care.

⁵³ HCJ 8665/14 Teshoma Nega Deste vs. The Knesset (published in Nevo, August 11, 2015).

Based on HIAS's experience of handling asylum applications, it appears that the stronger the asylum request, the longer its handling will require. This is particularly evident in the case of Sudanese nationals who escaped genocide in Darfur and ethnic cleansing in the Nuba Mountains and Blue Nile region. About 3,400 applications were filed by Sudanese nationals over the past decade, but only one application received a response. Previously, the Ministry of Interior attributed this delay to technical limitations and the need to develop a legal opinion concerning the handling of requests filed by Sudanese nationals. In January 2017, the media revealed an internal legal opinion of the RSD Unit which stated that these individuals should be recognized as refugees, but was never implemented.⁵⁴ After the State Comptroller criticized the Ministry of Interior for this,⁵⁵ and petitions were filed to the HCJ concerning the matter, the Ministry of Interior announced it would grant legal status, similar to refugee status, to about 800 Sudanese nationals from these regions over the age of 40, without recognizing them as refugees. The

handling of the rest of the requests is still frozen, and the petitions are still pending.⁵⁶

The Regulation does not include any mechanism for expedited approval of asylum application, even though mechanisms exist for expedited denial. Such a mechanism could have been applied to Darfuris, as well as other groups that the RSD Unit recognized are entitled to refugee status. For example, although the RSD Unit formulated a legal opinion that LGBT Eritreans should be recognized as refugees, only three applications containing this claim have received a determination. In his 2018 report, the State Comptroller recommended that the Immigration Authority set a time-table for every stage in the process of handling the asylum request and monitor the process,⁵⁷ however, the Regulation has not been amended in line with these recommendations.

⁵⁴ Yehuda Shohat, "[A Report Determined that Darfur Refugees Are Entitled to Legal Recognition – and The Ministry of Interior Ignored It](#)," *Ynet*, January 3, 2017. (Hebrew)

⁵⁵ State Comptroller's report, "The Ministry of Interior – Population and Immigration Authority – The Handling of Political Asylum Seekers in Israel," 2018.

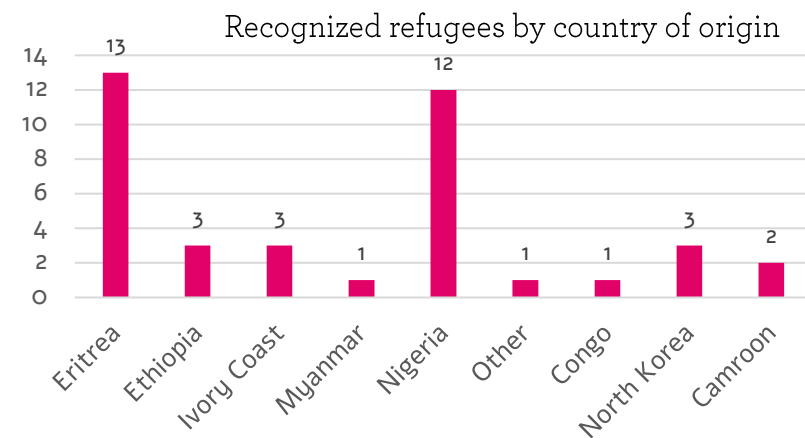
⁵⁶ HCJ 4630/17 Adam Gubara Tagal and others vs. the Minister of Interior (published in Nevo, February 25, 2019).

⁵⁷ State Comptroller's report, "The Ministry of Interior – The Handling of Political Asylum Seekers in Israel," 2018.

Decisions of the Minister of Interior to Accept/Reject Applications

The bottom line of this report is also its starting point: how many asylum applications are granted by the end of the whole procedure. Asylum applications that are forwarded to the Advisory Committee are then passed on, with the recommendation of the Committee, to the minister of interior, who decides whether to grant refugee status. It should be mentioned that this is an extraordinary mechanism in Israeli immigration law, by which the minister, a busy political official, personally makes decisions on each individual case, as opposed to the professional class. The data indicates that between 2014-2017, only 0.37% of the asylum applications reached the minister of interior, who accepts the recommendations of the Committee in 80% of the cases. Thus, only 0.06% of asylum seekers were recognized as refugees. In some cases, the Ministry of Interior transferred the handling of asylum applications to a “humanitarian” route, through which a person can be granted legal status

without recognizing her as a refugee. Attorneys who represented applicants in cases handled this way reported that the Immigration Authority apparently chose this solution to avoid creating a precedent that could lead to the recognition of other applicants as refugees. A large group that gained this legal status were asylum seekers from Sudan. Over the years, Israel granted about 1,200 Sudanese asylum seekers a temporary stay permit “on humanitarian grounds” without formally recognizing them as refugees.⁵⁸



⁵⁸ This status was granted to about 600 Darfuris who entered Israel during 2007, and later in 2018, to Sudanese from Darfur, the Nuba Mountains and the Blue Nile regions over the age of 40. Granting status based on humanitarian grounds denies the applicant the recognition as a refugee, denying him both the declarative recognition of the persecution he would face in his homeland, as well as certain rights that officially recognized refugees enjoy, including the right to family reunification. Another

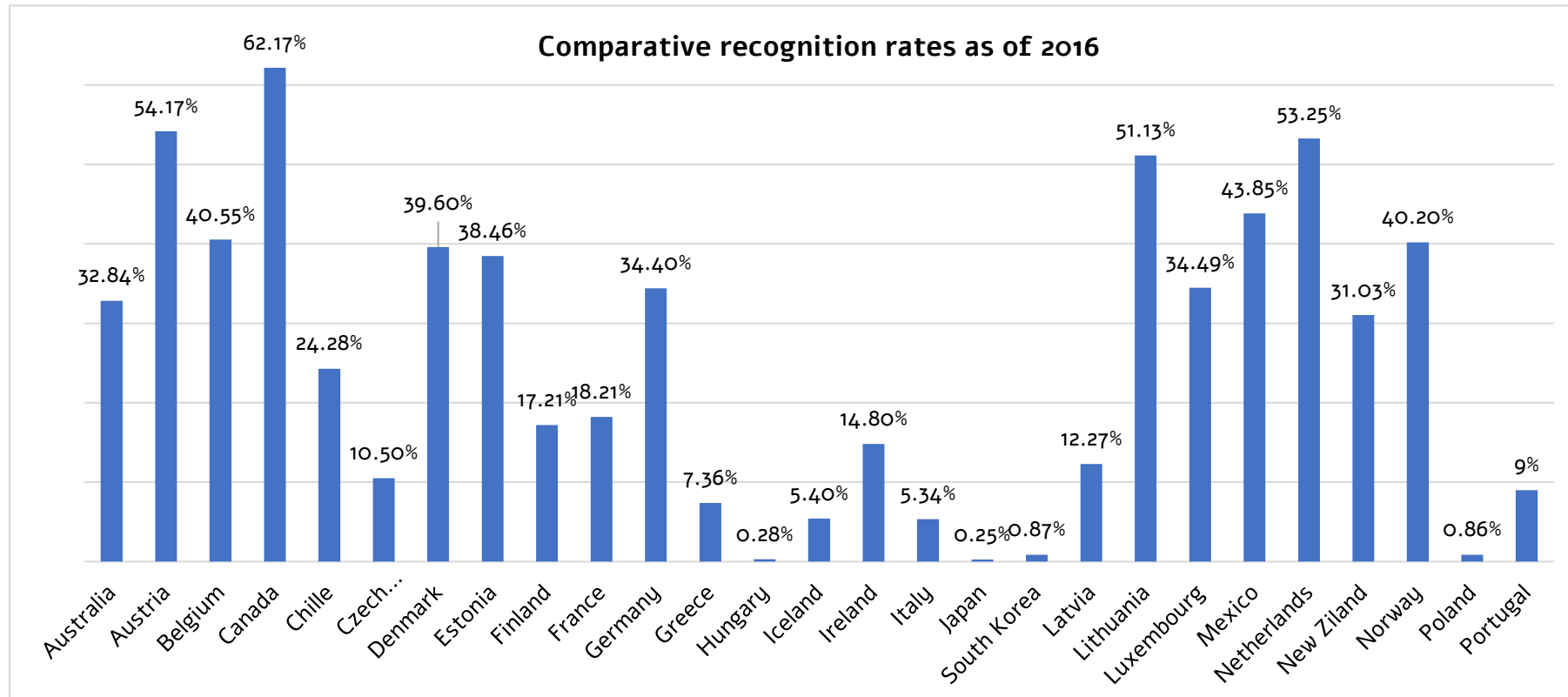
significant divergence is that abrogation of refugee status requires an orderly proceeding, while status on humanitarian grounds is renewed from time to time, with the applicant depending on the good will of the ministry of interior. With regards to the 600 Darfuris who were granted status in 2007, the Appeals Tribunals have ruled that they are, in fact, recognized as refugees.

Comparison to Other Countries

Israel's recognition rates of refugees are extremely low compared to other signatories of the Refugee Convention: both when it comes to the overall recognition rate, and specifically, when comparing the recognition rates around the world of Eritreans (90%) and Sudanese (60%).⁵⁹

The data shows that recognition rates of refugees in almost all OECD countries are hundreds of times larger than

recognition rates in Israel. Recognition rates in Israel are similar to those in countries such as Hungary, Poland and Japan, whose asylum systems are considered to be deeply flawed, thus indicating the shortcomings of the Israeli asylum system.



⁵⁹ The data is from the UNHCR, Statistical Yearbook 2016, 16th edition (February 2018), Table 9.

Revocation of Refugee Status

Revoking the legal status of a recognized refugee means deportation to her country of origin, if Israel carries out deportation to this country, or remaining in Israel, without the rights afforded to refugees, if Israel is unable to remove her. The Refugee Convention codifies the abrogation of refugee status under two cases: the first is ending protection,⁶⁰ in cases when the person no longer faces danger in her country of origin, or if the refugee forfeited her protection (for example, by willingly returning to her country). The second scenario is exclusion from the protection of the Convention if a person carried out a serious crime or a crime against humanity before entering the country of asylum. In addition, the Convention stipulates that a country can deport a refugee if “there are reasonable grounds for regarding him as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.”⁶¹ The UNHCR clarified that this refers only to crimes that are punished by the death penalty or another very severe punishment.⁶² This is how this provision was also interpreted around the world: in the United States, “a particularly serious crime” is seen as

one for which a person has been sentenced to at least five years in prison; in Australia and Germany, this phrase is seen as referring to a crime for which the asylum seeker has been sentenced to at least three years in prison.

Due to the low number of recognized refugees in Israel, the number of recognized refugees whose status has been revoked is quite limited, and the data indicates this happened in only two cases. These statistics do not include the approximately 1,400 Darfuri refugees who obtained status in 2007 pursuant to a decision of the prime minister and minister of interior at that time to grant legal status to the group without examining their individual claims. Some of those individuals lost their legal status, after being convicted of various criminal acts, even if those were not serious crimes. In response to appeals filed by those individuals, the Ministry of Interior claimed that since they were not recognized as refugees, the minister of interior had wide discretion concerning renewal of their legal status. However, the Appeals Tribunal ruled that those who received legal status through a governmental decision were, in effect, recognized as refugees, and therefore, before revoking their status, they

⁶⁰ Article A.C. of the Refugee Convention.

⁶¹ Article 33 of the Refugee Convention.

⁶² UNHCR, *The Exclusion Clauses: Guidelines on their Application* (1996), para 51, available at: <http://www.refworld.org/pdfid/3ae6b31d9f.pdf>

should undergo a hearing in accordance with article 11 of the RSD Regulation.⁶³

Requests for Reexamination

The process of reexamining an asylum application serves as an internal oversight mechanism on asylum decisions, before turning to the courts, and is carried out by an employee of the RSD Unit who previously did not examine the asylum application. Article 9.4.1 of the Regulation allows individuals whose asylum application was rejected in the expedited or

	2017	2018	2019
Requests for reexamination	161	292	378
Out of hand rejections	115	178	373
Rejected for delay	3	3	0
Rejected after reexamined by the head of the authority	4	4	2
Rejected after reexamined by the minister	5	18	5
Recognized as a refugee after reexamination	0	0	1

the full proceeding, to request to reexamine their case within two weeks after its rejection, but only if they have new additional information that was not previously included in the application.

Israeli courts have ruled that this reexamination should not focus solely on whether the applicant provided additional evidence as part of her request for reexamination, and that the reexamination should also consider whether a new ground for asylum is being proffered and whether there were any flaws in the initial examination of the case.⁶⁴ Therefore, the standard of care with which asylum applications should be examined applies to requests for reexamination as well.⁶⁵ Since the examination of the request to re-open the file is carried out by the same body that already gave a recommendation to reject the application, and not by a separate unit, it is not surprising that most of the requests for reexamination are rejected.

Those wishing to contest the decision to reject the reexamination request need to file an appeal to the Appeals Tribunal. There is no path to request a reexamination if an asylum application is rejected summarily, and therefore the

⁶³ Appeal (Jerusalem Tribunal) 2376-18 (issued on July 29, 2018).

⁶⁴ Administrative Appeal (Central District Court) 2001-12 A. K., M. T., J. A. T. vs. the Ministry of Interior (published in Nevo, August 26, 2013).

⁶⁵ Administrative Appeal (Tel Aviv Court) 47226-09-11 Kamra vs. the Ministry of Interior (published in Nevo, December 26, 2012); Administrative Appeal (Tel Aviv Court) 1692-01-12 Ufuri vs. the State of Israel (published in Nevo, January 13, 2013)

only way to contest such a decision is by filing a petition directly to the Appeals Tribunal.

Summary and Conclusions

The handling of asylum applications in Israel, a process that should be thorough and impartial, is in constant tension with “a declared policy of narrowly interpreting the Convention,”⁶⁶ with political leaders insisting that the asylum seekers in Israel are not refugees, despite the high recognition rates of Eritreans and Sudanese as refugees around the world (the nationals of both countries make up the majority of asylum seekers in Israel).

In addition, these political leaders consistently warn about the danger of being “flooded” with asylum seekers who would reach Israel’s borders, although the number of asylum seekers in Israel is particularly low, and in recent years, additional asylum seekers have not crossed the Egyptian border. Since the minister of interior is the one making the final decision on asylum applications, considerations concerning immigration policy inform the interpretation of the Refugee Convention and have a direct impact on the manner of examining asylum applications.

Given these considerations, it is understandable why most asylum applications never reach the desk of the minister of interior, when the RSD Regulation allows for a summary rejection of requests prior to reaching this stage, and legal opinions were written to reject entire groups of requests (defectors from the Eritrean army, Ukrainian and Georgian asylum seekers as a whole), and many of the applications that cannot be routed towards summary rejection (such as those of Sudanese nationals who fled war zones) are frozen and are not being examined at all. Thousands of asylum applications of Eritreans were rejected based on a legal opinion that has since been reconsidered, and now the applications have been reopened. Thousands of applications filed by Sudanese who have escaped genocide and ethnic cleansing are awaiting a determination for many years. Alongside the many tools found in the RSD Regulation allowing for summary rejection of applications, there is no procedure for fast-tracking recognition of applicants as refugees, even when there is a legal opinion recommending such recognition for a certain group.

In the few instances in which individuals are recognized as refugees (as mentioned, 0.06% of asylum applications), it

⁶⁶ Administrative Appeal 32641-10-16 The State of Israel – Population and Immigration Authority vs. John Doe (published in Nevo, January 26, 2017).

appears that most of their requests are not necessarily stronger, but rarer, so that recognizing them as refugees will not have broad implications: for instance applications based on sexual orientation, gender identity,⁶⁷ a rare trait, like albinism,⁶⁸ and particularly prominent religious leaders and political activists have been granted refugee status.⁶⁹

As mentioned above, the alternative solution of granting status based on “humanitarian grounds” was often used to avoid conclusively recognizing people are refugees.

The infinitesimally small recognition rates have life-and-death repercussions for those whose asylum applications are denied and they are returned to their country, but also for people who remain in Israel under group protection, without being recognized as refugees: they reside in Israel lawfully, but without any of the rights accorded to refugees. The recognition rate also has a clear impact on the public perception of asylum seekers, who are described by politicians and senior officials in the Ministry of Interior as people falsely claiming to be refugees. In the international

arena, Israel maintains one of the lowest recognition rates of refugees, and its asylum system has been harshly criticized by the UNHCR and aid organizations. The disparity between Israel’s asylum system and those of advanced countries became even more apparent in recent years, when asylum seekers lost hope with Israel’s system, and emigrated to other countries, in which they were granted refugee status.⁷⁰

In this report, we examined Israel’s asylum procedure, step by step, and how it is implemented, showing a significant gap between the obligations the State undertook under the Refugee Convention, and Israel’s regulation concerning the handling of asylum applications and its implementation. The recommendations of the court and the Comptroller have not been implemented: the number of employees in the RSD Unit has not grown significantly; the RSD Unit is still located in one office in the country and only one committee examines the requests; requests are rejected in huge numbers in summary proceedings, despite the scrutiny required when making such life-and-death decisions; the Regulation was not

⁶⁷ An Eritrean who was recognized as a refugee due to his sexual orientation: Assaf Zagrizak, [“The Ministry Recognized a Gay Eritrean as a Refugee,”](#) *Ynet*, December 7, 2016. (Hebrew)

⁶⁸ An albino girl from the Ivory Coast and an albino from Nigeria were recognized as refugees. Itamar Eichner, [“Israel for Africa’s Albinos: ‘We are Sensitive to the Discrimination,’”](#) *Ynet*, April 19, 2015. (Hebrew); Tomer Zarhin, [“Israel Will Grant Political Asylum to a Four-Year-Old Because She is Albino,”](#) *Haaretz*, September 16, 2011. (Hebrew)

⁶⁹ A Darfuri who led the protests of asylum seekers in Israel was recognized as a refugee. Omri Ephraim, [“For the First Time: An Asylum Seeker from Darfur was Recognized as a Refugee,”](#) *Ynet*, June 23, 2016. (Hebrew)

⁷⁰ Ilan Lior, [“Rise in Asylum-seekers Leaving Israel for West, Especially Canada,”](#) *Haaretz*, July 20, 2017; Noa Achituv, [“Israel Threw Them Away. Canada Welcomed Them,”](#) *Haaretz*, October 11, 2018. (Hebrew)

amended to include time-tables for the different stages of handling requests; no explanations or assistance is provided to applicants throughout the process; asylum seekers are not informed about their right to apply for asylum; and recognition rates are still close to zero.

It appears that the end result of the process is indicative of its beginning and how it is conducted: when the outcomes are so extreme, one can only assume that the procedure is flawed. The numbers speak for themselves.