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Israel: Knesset should reject draft law imposing prolonged detention on asylum-seekers

Amnesty International urges Israeli legislators to reject a draft law that imposes lengthy detention periods on asylum-seekers and irregular migrants, disregarding their reasons for entering the country. The Knesset (parliament) is expected to vote on the bill in the coming days.

The draft law provides for the automatic detention of anyone who enters the country via the Egyptian border, described as “infiltrators”, and gives the Israeli government the legal authority to imprison migrants and asylum-seekers for three or more years. Individuals coming from countries considered by the government to be “hostile” to Israel, including those from Darfur in Sudan, would face detention without time limits. Currently, most asylum-seekers and irregular migrants crossing from Egypt are detained upon entry but released within a few weeks.

Amnesty International acknowledges that states, including Israel, have the right to secure their borders and regulate the entry of foreigners into their territory, but stresses that this right is limited by international law. Any law, policy or measure relating to border control or the regulation of entry and stay that results in violations of international law or human rights goes well beyond the legitimate application of state sovereignty. In particular, individuals seeking asylum should never be rejected at the border, denied entry, or returned to a country where they would be at risk of serious human rights violations, or a country where they would not be protected against such return.

Amnesty International is further concerned about the potential impact of the proposed law on the right to liberty of asylum-seekers and migrants. Any measures restricting this right should only be used when necessary and proportionate to achieving a legitimate objective under international law. Any decision to detain should always comply with international standards pertaining to the lawfulness of detention, and should be based on a detailed individualized assessment, including the individual’s personal history and the risk of absconding. International law makes clear that state authorities must demonstrate in each individual case that detention is necessary and proportionate to the objective to be achieved. Automatic and prolonged detention as envisaged in the draft bill clearly violates international law and standards.

Where detention is used as a punitive measure, it is a disproportionate and inappropriate response to irregular migration. It only serves to stigmatize and criminalize migrants, driving many underground.

Furthermore, Amnesty International considers the use of the term “infiltrators” to be inappropriate as it carries connotations of threat and criminality; its use by officials and in the public sphere fuels xenophobia and discrimination against asylum-seekers and migrants. Migrants in irregular situations should not be considered criminals under the law, and should not be treated as criminals. The bill will also criminalize any sort of help or assistance to infiltrators and thus may subject rights groups and aid organizations to harsh penalties.

Amnesty International believes the draft law falls far short of Israel's international legal obligations as a state party to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, among others.

Additionally, while the bill calls for the release of unaccompanied minors, children coming with relatives are subjected to the same prolonged detention as adults. Amnesty International believes that the detention of children solely for immigration purposes, whether they are unaccompanied, separated or held together with their family members, can never be justified and represents an abject failure of the obligation to respect, care for, and protect children's human rights. Where strictly necessary to limit the freedom of movement of families with children, alternatives to detention do exist. Israel should invest in open reception facilities for families with children.

Amnesty International urges Knesset members to ensure that any immigration or national security provisions fully respect Israel's international human rights obligations, including ensuring the protection of all individuals within its jurisdiction, regardless of their immigration status, and ensuring that individuals are not returned to states where they would be at risk of serious human rights abuses.

Background

The proposed Prevention of Infiltration Law – 2011 is intended to amend the 1954 Infiltration Law enacted under Israel's emergency legislation. The draft law passed its preliminary reading on 28 March 2011 and was then submitted to the Knesset's Internal Affairs and Environment Committee for discussions. On 19 December, the Committee voted in favour of the legislation. The bill is now pending second and third readings, which are likely to take place on the same day. Laws are enacted on passing the third reading.

Since 2005, approximately 45,000 Eritreans, Sudanese and other nationals have entered Israel via the Egyptian border to seek asylum. According to statistics published earlier in December by the Population and Immigration Authority of the Israeli Ministry of Interior, more than 13,600 people entered from Egypt during 2011, the vast majority of them Eritreans and Sudanese. Had the proposed law been in force, all these individuals would have been considered to be “infiltrators” and would have been subjected to prolonged imprisonment, irrespective of whether they had come to Israel to seek asylum. Historically, Israeli asylum procedures have not been fair, consistent or transparent. In the last several years, Israel has categorically denied Eritreans and Sudanese access to refugee status determination

procedures, in clear violation of its obligations under the 1951 Refugee Convention. With respect to asylum-seekers from other countries, only a handful have been granted refugee status out of thousands of applications over the last several years.

The Prevention of Infiltration Law is part of a larger Israeli plan to deter the arrival of migrants and asylum-seekers. The government is currently building new sections in Saharonim prison, a migrant detention centre in the Negev desert in southern Israel, in order to expand its capacity to 5,400 places. Meanwhile, the National Planning and Building Council has published plans for an additional prison to hold thousands more individuals, and is currently discussing building permits for this facility. As an additional means of deterrence, the Israeli government has committed to levying heavy fines on employers hiring “infiltrators”. Furthermore, earlier in December 2011, the Prime Minister’s Office announced that Benjamin Netanyahu will travel to several African countries during 2012 with the aim of “formulating a plan” for the deportation of asylum-seekers to third countries.

Public Document

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