

Government Policy on Absorbing Refugees from Ukraine

This paper was submitted by Zulat for Equality and Human Rights to the Knesset Interior and Environmental Protection Committee ahead of the discussion held on 23 March 2022 at 11:00, on the issue of government policy regarding the absorption of refugees from Ukraine.

On 13 March 2022, the Interior Minister published an updated plan titled "Policy for Entry Into Israel of Foreign Nationals Fleeing the War in Ukraine." This plan is based on three premises: prior approval from the Foreign Ministry before boarding a flight to Israel, commitment by Israeli relatives of refugees to post a financial guarantee, and a quota of 5,000 refugees with no family in Israel and ineligible for Israeli citizenship under the Law of Return.¹ The plan implies but does not explicitly state that Ukrainians eligible under the Law of Return will be absorbed similarly to eligible immigrants from other countries and will be granted citizenship and the same benefits as immigrants. This plan is neither legal nor moral, and in this position paper we will seek to point out the main difficulties it presents.²

1. Israel's obligation to absorb asylum seekers from Ukraine must not be limited by quotas

Israel has a legal and moral obligation to accept war refugees from Ukraine. This obligation is based on the 1951 UN Convention Relating to the Status of Refugees (hereinafter: the Refugee Convention),³ drafted with the participation of Israel and Jewish organizations in light of their special interest in attaining such a treaty after the trauma of World War II. The situation faced by Jewish refugees fleeing the Holocaust who were not admitted into safe countries and were compelled to return to Europe,⁴ or perished en route

¹ Population and Immigration Authority, [Interior Minister's Updated Plan for Entry of Ukrainian Nationals](#), 13 March 2022 (Hebrew). The word "family" appears to have been interpreted broadly, as including anyone able to lodge and provide for them.

² This document uses the terms "asylum seeker" and "refugee(s)" interchangeably. The Refugee Convention uses the term "refugee", while the term "asylum seeker" refers to a person who claims to be a refugee. Given that in the current circumstances there is hardly any question that the men and women fleeing Ukraine face tangible danger to their lives and freedom, we believe that Ukrainian asylum seekers are refugees requiring no extensive checks other than a basic verification of their identity.

³ UN High Commissioner for Refugees, [Convention Relating to the Status of Refugees](#), 1 January 1951.

⁴ US Holocaust Memorial Museum, [Voyage of the St. Louis](#), 12 July 2021.

clearly illustrated the need to impose a legal obligation to grant a safe haven to war refugees.

The Refugee Convention defines who is a refugee, as well as the obligations of the country of refuge toward people defined as refugees. According to this definition, a refugee is an individual who "owing to well-founded fear of persecution 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." There is no doubt that the Ukrainian asylum seekers were persecuted because of their nationality, and perhaps for other reasons as well. The pace and spread of the fighting show that fleeing within the boundaries of Ukraine does not ensure safety to anyone, and this being the case refugees clearly will not wait for the fighting to arrive on their doorstep and will choose to flee the danger beforehand.

Many times, however, the displacement of entire groups is such that each member of the group should individually be considered a refugee.⁵ The same is true in this case of an all-out war where a civilian population is attacked indiscriminately, its physical safety in jeopardy, left totally destitute and facing severe food insecurity. Often, the need to provide assistance in such situations is extremely urgent, and for purely practical reasons it is impossible to determine the status of each person individually, and therefore it is more practical to recognize all Ukrainians as eligible for refugee status. **The bureaucratic process for recognizing asylum seekers from Ukraine should be eased in order to spare them traumatic procedures involving a description of the persecution they experienced – and make them relive it once again – and suffice with identifying their country of origin as the condition for awarding them refugee status.**

It should be noted that international law contains no clause requiring refugees to seek asylum in the first country they reach. Accordingly, no clause exempts Israel from liability toward asylum seekers that could have sought asylum in another country they passed through.

⁵ UN High Commissioner for Refugees, [Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status](#), December 2011.

2. Refrain from piling up bureaucratic obstacles before Ukrainians seeking to come to Israel, including the requisite to obtain prior approval from the Foreign Ministry

As stated, the current government plan requires prior approval from the Israeli Foreign Ministry before boarding a flight to Israel. This contravenes the visa waiver agreement between Israel and Ukraine, and even worse, runs counter to Israel's obligation under the Refugee Convention. Refugees fleeing for their lives are in a state of severe stress and lack the physical, mental, and financial resources to arrange bureaucratic permits to secure their escape. The waiting period for a permit puts Ukrainian fugitives at risk, and the lack of travel papers might fatally endanger their lives, freedom, and physical wellness. The signatories to the Refugee Convention, including Israel, acknowledged that fleeing refugees are often unable to wait for travel documents and visas, and therefore undertook not to criminalize refugees whose escape is justified and to impose only necessary restrictions on their illegal entry and presence in the country of refuge.⁶ Therefore, the option of flying to Israel must not be conditioned on obtaining a prior permit, and an arrangement must be made that allows even those who have no valid travel documents to fly to Israel. There have been reports about failure to process applications due to malfunctions in the computers of government ministries. Such mishaps, seemingly banal, can have catastrophic consequences and cost human lives, and are mere proof of the fact that bureaucratic overload and barriers are inappropriate when it comes to refugees fleeing for their lives.⁷

3. Refugees must not be sent back to Ukraine before the situation there stabilizes

Data from the Population Authority show that since the outbreak of the war on 24 February 2022, more than 1,000 Ukrainian citizens departed Israel for Ukraine.⁸ We have no data on residents of Ukraine or stateless persons who were sent back. The data do not clarify how many of those who departed for Ukraine did so of their own free will, but the totality of the circumstances indicates that they were not likely to do so of their own free will. It should be noted that the Refugee Convention obliges the State of Israel to refrain from sending

⁶ The Refugee Convention, Article 31.

⁷ Bar Peleg, [Documents Not Uploaded to Foreign Ministry's Website, New Refugee Absorption Plan Cannot Be Implemented](#), *Haaretz*, 13 March 2022 (Hebrew).

⁸ According to data posted by the [Population and Immigration Authority](#), as of 16 March 2022, the number stood at 944 Ukrainians.

people back to a place where their lives and freedom will be in jeopardy. Moreover, according to the principle of non-refoulement that is the basic tenet of the Convention, this obligation extends to stateless persons and residents as well.⁹ The principle of non-refoulement is also binding on Israel as a customary principle in international law, and was defined by the Supreme Court as deriving from the sanctity of human life enshrined in Basic Law: Human Dignity and Liberty and as an overarching principle that is not limited to "refugees." It applies to all Israeli government authorities with regard to the deportation of a person from Israel.¹⁰ Hence, people must not be sent back to Ukraine either directly or indirectly, **neither through forcible deportation nor in a roundabout way by exerting pressure on Ukrainian asylum seekers through such bureaucratic means as procrastination, failure to provide basic services (such as lodging and regular access to food and medical care), demands to post financial guarantees, excessive permit requirements, and the like, to the extent that these are intended to break their spirit and encourage them to abandon their asylum application in Israel.**

4. Treat Ukrainian asylum seekers with sensitivity, and be particularly attentive to questions of gender, age, health, and disability

Most of the asylum seekers are women and children, primarily because men face practical difficulties to leave the country. **Israel must act with maximum gender sensitivity when dealing with Ukrainian women seeking asylum.** Among other things, they must be assured protection, ascertain that the women and children have not been subjected to abuse or exploitation (sexual assault, human trafficking, domestic violence, etc.) on the way, receive whatever treatment is necessary, allow them to keep in touch with other women, etc. To the extent possible, the authorities should assign women to deal with women seeking asylum.

⁹ Ruvy Ziegler, [Displacement from Conflict: Old Realities, New Protections?](#) Lieber Institute, 17 March 2022. The EU's Temporary Protection Directive adopted in early March extended its protection to "third-country nationals (TCNs) or stateless persons legally residing in Ukraine who are unable to return to their country or region of origin in safe and durable conditions because of the situation prevailing in that country."

¹⁰ Supreme Court Case 4702/94 Al Tai et al v. Interior Minister et al, 1995 (Hebrew).

Children should be treated in accordance with Israel's commitment under the UN Convention on the Rights of the Child,¹¹ with the best interest of the child as the leading principle. Decisions on deportation or permission to remain in Israel should be guided by this principle. In addition, children should be given access to age-appropriate educational and physical activities, familiar food, suitable developmental and preventive medical care (e.g., immunization, treatment of developmental problems, etc.), as well as emotional support as necessary. Unaccompanied minors should be cared for by the welfare authorities and should be placed under suitable custody (foster care or adoption, as necessary). To the extent possible, avoid outside-the-home arrangements for toddlers in order to provide them with the optimal living conditions and ensure they can stay in touch with their adult relatives. Unaccompanied minors must be assigned a guardian to deal with any legal representation and proceedings. Disabled persons should receive appropriate care, to the extent possible within the community, to ensure they enjoy maximum access to all areas of life.

5. Refrain from placing asylum seekers in detention

As a derivative of the ban on incrimination of the entry and presence in the country of refuge of undocumented refugees enshrined in the Refugee Convention, asylum seekers must not be placed under detention. Retaining refugees at Ben-Gurion Airport's Yahalom facility or in hotels under severe restrictions of their freedom of movement is equivalent to holding them in detention, even though they committed no crime and all they did was try to flee for their lives and escape an inferno. **Asylum seekers should enjoy freedom of movement, subject to a requirement to periodically report to the authorities and must not be locked up.** Since it is anyway impossible at the moment to deport asylum seekers to Ukraine, such detention serves no legal purpose. Locking them up, isolating them, and putting them at the mercy of strangers only aggravates their mental distress. Keeping them in these conditions also limits their ability to advance the processing of their asylum application, to obtain legal representation, and to deal with such authorities as the Custody Review Tribunal, the Israeli courts, and the UNHCR's Refugee Status Determination Unit processing asylum applications. Holding them in a lockup facility limits the access of

¹¹ UN Human Rights Office of High Commissioner, [Convention on the Rights of the Child](#), 20 November 1989.

asylum seekers to medical care, education and religious services, parliamentary oversight, and more.

6. Allow asylum seekers a dignified living during their stay in Israel

In addition to allowing Ukrainian asylum seekers to stay in Israel, care should be taken to assure them a dignified living, and that they are not pushed into poverty, exploitative conditions, undocumented work, or risky situations during the time they remain under Israel's protection.

The Refugee Convention defines the obligation of signatories to grant labor permits to refugees and allow them wage-earning employment,¹² similarly to other foreigners. It also entitles refugees to welfare benefits similar to those received by citizens,¹³ access to housing,¹⁴ public education,¹⁵ social security,¹⁶ and identification documents, including travel papers.¹⁷

In view of the great vulnerability of the population in question, it is important that Ukrainian refugees be extended comprehensive health insurance, similar to that enjoyed by Israeli citizens insured by the State Health Insurance. The insurance must be all-inclusive and not apply only to emergencies or discriminate between asylum seekers on the basis of age, and should be based on medical need only.¹⁸

When planning housing, education, and labor solutions for the Ukrainian refugees, segregative plans that isolate the refugees and are inconsistent with a dignified living must be avoided. Therefore, do not establish separate educational frameworks given that these are degrading and discriminatory by definition;¹⁹ do not house refugees in temporary

¹² [The Refugee Convention](#), Article 17 (Wage-Earning Employment). The Convention also recognizes the right to self-employment (Article 18).

¹³ [The Refugee Convention](#), Article 20.

¹⁴ [The Refugee Convention](#), Article 21.

¹⁵ [The Refugee Convention](#), Article 22.

¹⁶ [The Refugee Convention](#), Article 24.

¹⁷ [The Refugee Convention](#), Articles 27-28.

¹⁸ This contrasts with the current stated policy of the Ministry of Social Welfare, according to which people aged 60 and above will enjoy full medical care, while the rest will receive emergency medical care. See: Bar Peleg, [Israel To Offer Medical Coverage for Ukrainian Refugees Over 60](#), *Haaretz*, 21 March 2022.

¹⁹ Beersheba District Court, [Case 29883-07-11 Atush Majad Manjan et al v. Eilat Municipality and Education Ministry](#), 2 August 2012.

structures (such as tent camps) or in venues that enable no privacy or a proper family life (such as hangars where numerous refugees are lodged under the same roof); favor education and housing solutions that enable the refugees to integrate into the labor market in order to earn a dignified living over solutions that push them to the margins of society.

7. Stop giving priority to asylum seekers with relatives in Israel

The tendency to favor the entry of Ukrainian asylum seekers with relatives in Israel able to lodge and provide for them amounts to the privatization of Israel's obligation under the Refugee Convention. To repeat, Israel has a commitment to provide for the basic needs of asylum seekers, which must not be conditioned on their ability to find independent solutions for themselves. This is a discriminatory requirement, as families with children or with many children, families with people with disabilities, or families with elderly persons are less likely to find somebody to provide for them. Civil society in Israel has amazingly mobilized to help refugees from Ukraine, but this does not allow the state to forgo its obligations since it bears the primary duty toward the refugees.

Author: Tally kritzman-Amir