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Israel's Policies toward Asylum-Seekers: 2002-2014

by Galia Sabar and Elizabeth Tsurkov



ABSTRACT

This article analyses Israel's policies toward Sudanese and Eritrean asylum-seekers from 2002 to 2014, a period during which 60,000 entered the country on account of its lax border with Egypt. After introducing Israel's unique immigration regime the article focuses on Israel's asylum system, emphasizing the low recognition rates and its chaotic "patch work," "on the move" character. The second part examines the ways Israel has made it difficult for asylum-seekers to live within its borders after entering, focusing on their limited access to social and other public services, and, since 2012, the adoption of a policy of prolonged detention without trial and active encouragement of those detained to leave Israel "willingly" to Uganda and Rwanda. Finally, we use interview data to analyse asylum-seekers' daily realities and explore their understanding of and struggle against Israel's immigration and asylum policies.

Israel | Migration | Refugees | Human rights

keywords

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Introduction

This article analyses Israel's policies towards asylum-seekers from 2002 to 2014, a period during which the number of asylum-seekers in Israel increased dramatically from a mere handful at the beginning of the century to over 60,000 in 2012. The vast majority of asylum-seekers are from Sudan and Eritrea, who have crossed one or more intermediate states *en route* to Israel. After briefly introducing Israel's unique immigration regime the article will first focus on its recently developed asylum system. We shall argue that, although it was created as a chaotic "patch work," "on the move" policy – at times hard to follow and comprehend – this asylum system follows the same central norms of Israel's citizenship and immigration processes that were created to safeguard the Jewish character of the State of Israel.

Following a presentation of Israel's low recognition rate of refugees, the article will highlight the country's reluctance to grant refugees protection and demonstrate how it has resorted to implementing protection mechanisms that complement the Refugee Convention, such as granting (formal or informal) temporary protection.

The second part will examine the ways in which Israel has made it difficult for asylum-seekers to live within its borders after entering, focusing on their limited access to social and other public services, and, since 2012, the adoption of a policy of prolonged detention without trial and active encouragement of those detained to leave Israel "willingly" without sufficient guarantees for their safety. The article argues that these coercive measures are an intensification of Israel's overall policy that seeks to discourage non-Jewish migration to Israel. Moreover, these policies are in clear contravention of the Refugee Convention and EU policies, and yet Western governments have not applied measures to induce policy change in Israel.

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The final section of the article is based on interviews with Sudanese and Eritrean asylum-seekers in Israel. We use interview data to analyse asylum-seekers' daily realities and explore their understanding of and struggle against Israel's immigration and asylum policies.

1. Israel's immigration regime: a brief introduction

The asylum system developed in Israel over the past decade follows the ideology, norms, rules and regulations that constitute the foundation of Israel's citizenship and immigration policies. Hence, when asylum-seekers began entering Israel in growing numbers from 2005 they were confronted by an immigration policy whose primary purpose was to ensure unfettered Jewish migration and prevent all other migrations. This policy, while based on several legal rulings, is grounded, first and foremost, in the Law of Return (1950), which states that every Jew, so long as at least one grandparent is Jewish, has the right to immigrate to Israel, and to settle and acquire citizenship there.¹ The purpose of this law was to provide protection and shelter for Jews on the basis of a shared national and religious identity; thus, any Jew who comes to Israel may acquire Israeli citizenship by return, residence, birth or naturalization under the Nationality Law (1952).²

Together with the Law of Return and the Nationality Law, the Entry to Israel Law (1952) was issued to regulate the right of non-Jewish non-nationals to enter and reside in Israel. This law defines procedures for acquiring an entry visa and establishes the grounds upon which non-nationals may be deported. The third section of this law excludes Palestinians from acquiring nationality.³

Following an increase in attempts by Palestinian guerilla fighters (referred to as *fedayeen*) based in Jordan and Egypt to penetrate Israel via the eastern and southern borders in order to carry out violent attacks against Israeli targets, the government introduced the Prevention of Infiltration Law in 1954.⁴ This law defined an "infiltrator" (Hebrew *mistanen*) as someone who "entered Israel knowingly and unlawfully" and who was "a national or citizen of the Lebanon, Egypt, Syria, Saudi Arabia, Trans-Jordan, or the Yemen," or who was a resident, visitor or citizen of

¹ Law 5710-1950: *Law of Return*, 6 June 1950, in Book of Laws 51, p. 151; Law 5730-1970: *Law of Return (Amendment No. 2)*, 10 March 1970, in Book of Laws 586, p. 34, <http://www.mfa.gov.il/mfa/mfa-archive/1950-1959/pages/law%20of%20return%205710-1950.aspx>.

² Law 5712-1952: *Nationality Law*, 1 April 1952, in Book of Laws 95, p. 146, <http://www.israellawresourcecenter.org/israellaws/fulltext/nationalitylaw.htm>.

³ Law 5712-1952: *Entry to Israel Law*, 26 August 1952, in Book of Laws 111, p. 354, <http://www.israellawresourcecenter.org/israellaws/fulltext/entryintoisraelaw.htm>.

⁴ It should be noted that not all of those who entered via the eastern border came to carry out violent attacks. Some were innocent victims of the consequences of the 1948 war and had crossed the border in an attempt to collect possessions and pick up unharvested crops. All, however, were considered to be infiltrators in the eyes of Israeli law. See Law 5714-1954: *Prevention of Infiltration (Offences and Jurisdiction) Law*, 16 August 1954, in Book of Laws 161, p. 160, <http://www.israellawresourcecenter.org/israellaws/fulltext/preventioninfiltrationlaw.htm>.

Palestine who was armed and who sought "to cause death or serious injury to a person." Such infiltrators were subject to criminal law, trial by a military tribunal and could be imprisoned for up to five years.

These four basic laws – the Law of Return, the Nationality Law, the Entry to Israel Law and the Prevention of Infiltration Law – established the foundation for Israel's migration policy and, when taken as a whole, limited the number of legal avenues for non-Jewish migrants to gain citizenship. In many ways all these laws – especially the Prevention of Infiltration Law – also served as the foundation of the country's national frontier mentality.

With this in mind, it is important to mention that in addition to adopting these laws, Israel was one of the first countries to sign and ratify the 1951 Convention Relating to the Status of Refugees, being cognizant of the terrible fate of Jewish refugees during the Second World War. The Convention, however, was never incorporated into Israeli law, a step that would require Israeli legislation.

2. Challenging Israel's migration regime: the arrival of international migrant labourers

Until the early 1990s Israel had very few non-Jewish migrants, and only a handful of international labour migrants. Israel did, however, employ Palestinian workers either from the West Bank or from the Gaza Strip, mainly in agriculture and construction. Most of these workers came during the day and returned to their homes at night, and so they were not regarded as labour migrants. In the late 1980s their numbers reached about 100,000, however.⁵ Following the increase in violence and defensive closures brought on by the Palestinian uprising (*intifada*) at this time, the Israeli government decided, for the first time in its history, to allow international labourers to enter the country in large numbers to replace the Palestinian workers, especially in the fields of agriculture and construction. Beyond determining the number of work visas issued per year, the state instituted rules and regulations pertaining to their daily lives, primarily ones that were concerned with labour rights as Israel regarded migrant labourers as mere temporary workers rather than potential migrants on a path to citizenship. Hence, one of core statutes enacted during this period limited the labourers time of sojourn in Israel to a maximum of 63 months.⁶ However, due to inefficient enforcement of this and other regulations, tens of thousands of migrant labourers remained in the country, establishing

⁵ On the Palestinian workers as foreign workers and not labour migrants and on the relation between the Palestinian Israeli conflict and the import of international labour migrants see Rebeca Rajzman and Adriana Kemp, "State and NonState Actors: A Multilayered Analysis of Labor Migration Policy", in Dani Korn (ed.), *Public Policy in Israel. Perspectives and Practices*, Lanham, Lexington Books, 2002, p. 155-174.

⁶ The only exception is made for caregivers, whose departure would harm their Israeli employer.

families and developing communities.⁷ Yet they had few, if any, legal avenues to gain residency or citizenship.⁸

In the early 2000s, when the number of international labourers made up 10 percent of the labour force and had reached 250,000, the Israeli government sought to implement large-scale deportations of these labourers due to growing unemployment among Israelis. Thus, in 2002, the government established an immigration directorate within the Ministry of Interior to achieve the policy objective of reducing the number of undocumented migrants residing in Israel.⁹ Then Prime Minister Ariel Sharon set a goal of 50,000 deportations to be carried out within sixteen months of the Directorate's operation. However, the Directorate, lacking the necessary staff, was forced to rely on the Israeli Police to carry out the raids and arrests, some of which were extremely violent.¹⁰

It is within this context that asylum-seekers, who began entering Israel in growing numbers since 2005, found themselves. They were confronted by an immigration policy whose intention was, as demonstrated above, to ensure that Jews are able to immigrate to Israel freely while non-Jewish labour migrants are barred from gaining citizenship, except in rare cases.

3. African asylum-seekers enter Israel: major milestones

3.1 Numbers

In 2004, eleven asylum-seekers crossed into Israel from Egypt, all of them survivors of the genocide in Darfur, and, in 2005, an additional 453 asylum-seekers entered through the lax border with Egypt, most of them from south and west Sudan (Darfur). In 2006 the number of asylum-seekers who entered had doubled, reaching 1,204. Interviews with Sudanese asylum-seekers who entered Israel in 2006 revealed that they were deeply affected by the Mustapha Mahmoud Park Massacre in Cairo on 30 December 2005. After a peaceful sit-in of Sudanese and South Sudanese families outside the offices of the United Nations High Commissioner for Refugees (UNHCR) in Cairo had gone on for three months, Egyptian security forces opened fire on the crowd, killing fifty-six people and detaining hundreds.¹¹ Following the

⁷ On the lively African communities see Galia Sabar, "Israel and the 'Holy Land': The Religio-Political Discourse of Rights among African Migrant Labourers and African Asylum Seekers, 1990-2008", in *African Diaspora*, Vol. 3, No.1 (2010), p. 42-75.

⁸ See the Israel Government Portal, *Coming to Work in Israel: Guide for Migrant Workers*, <http://www.gov.il/firstgov/topnaveng/engsituations/esmigrantworkersguide/esmwgcoming>.

⁹ On 1 January 2009, became the Administration of Border Crossings, Population and Immigration (PIBA).

¹⁰ Kav LaOved and Hotline for Refugees and Migrants, *Immigration Administration or Expulsion Unit?*, May 2003, <http://hotline.org.il/?p=2014>.

¹¹ Eva Dadrian, "Remembering the Massacre in Mustapha Mahmoud Park", in *Pambazuka News*,

massacre, many refugees felt they were no longer safe in Egypt and decided to seek shelter in Israel.

In 2007, Eritreans seeking asylum began entering Israel and, as of January 2015, constitute 73 percent of all asylum-seekers in Israel. By February 2015, 47,000 asylum-seekers, mostly from Eritrea and Sudan, resided in Israel. As Table 1 demonstrates, a significant increase in the number of asylum-seekers residing in Israel took place between 2005 and 2014.¹² It was the first time in Israel's history that so many people sought asylum and the state's asylum system was clearly not equipped to deal with them.

Table 1 | Number of irregular entries into Israel by year

Until 2006	2007	2008	2009	2010	2011	2012	2013	2014
2,731	5,065	8,769	5,217	14,680	17,300	10,438	43	21

3.2 Procedures and policies

Before we present and analyse the major milestones in the creation of the state's asylum system it should be clearly stated that, on the whole, the rules, regulations and procedures are inconsistent, defensive and issued "on the move." This inconsistency became the most conspicuous feature of Israel's asylum policy between 2005 until the present day. At the same time, the established asylum system does adhere to the same central norms that define Israel's citizenship and immigration processes.

Hence, once the first African asylum-seekers crossed the border between 2005 and 2006 Israeli authorities held them in prolonged detention without trial, with most spending almost a year in prison.¹³ As all of them came from Sudan – an enemy state – it was argued that they could not be released from detention since they posed a danger to the Israeli public. Due to the increasing number of asylum-seekers entering Israel the government constructed a new detention facility called Saharonim on the border with Egypt. Nevertheless, the detention period of asylum-seekers decreased dramatically from over a year in 2006 to only a few weeks in 2008.¹⁴ This change in policy may be attributed not only to the constant lack of

No. 236 (5 December 2006), <http://www.pambazuka.net/en/category/features/31111>.

¹² Population, Immigration and Border Authority (PIBA), *Data on Foreigners in Israel. Summary for 2014* (Hebrew), January 2015, http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/sum2014_final.pdf.

¹³ The Israeli government and UNHCR wished to return the asylum-seekers to Egypt and sought to secure a deal with the Egyptian regime that would allow Israel to do so; such a deal never materialized.

¹⁴ Refugees' Rights Forum, *Asylum-Seekers and Refugees in Israel: May 2010 Update* (Hebrew), 16 June 2010, <http://hotline.org.il/?p=2610>. See location of the Saharonim facility, which is adjacent to Ktziot, the latest detention facility for asylum-seekers in Holot: <https://www.google.co.il/maps/>

space in the existing detention facilities but also to the protracted legal battles waged by Israeli NGOs.

The same inconsistency regarding detention was also commonplace in the regulations concerning the type of visas issued to asylum-seekers. On 17 September 2007, for example, Prime Minister Ehud Olmert declared that he would grant 498 Darfuris refugee status, arguing that the rest are "work infiltrators" who will be deported from Israel.¹⁵ Hence, between 2008 and 2009, the Ministry of Interior issued A5 visas to 600 Darfuris according to the lists of Darfurians compiled by the UNHCR. This visa, which grants its holders temporary residency, the right to work, social services and medical insurances, was issued without an examination of their individual cases (the refugee status determination, RSD, process).

While the Prime Minister declared those beyond the 600 Darfurian refugees as "work infiltrators" to be deported, in January 2008 the Immigration Directorate granted the 2,000 Eritreans already residing in Israel a B1 visa. This visa, which until then was issued only to migrant workers, grants its holder only the right to work.¹⁶ In February 2008, Israel began handing out the 2A5 "conditional release" visa to all other asylum-seekers. All Sudanese nationals who were not from Darfur, such as people from South Kordofan and South Sudan, as well as Eritreans who arrived after December 2007, received this visa. *De jure*, this visa grants its Sudanese and Eritrean holders only temporary protection from deportation though, *de facto*, most do work.¹⁷ The constant rise in the number of new asylum-seekers entering the country brought about this change in visa policies.

In accordance with UN recommendations and Israeli law, Eritrean and Sudanese nationals who entered Israel were protected from being deported back home. At the same time, Israel barred them from filing individual asylum claims, thus preventing

place/Saharonim+Penitentiary/@30.8831621,34.453817,14z.

¹⁵ Barak Ravid and Ruth Sinai, "Fewer Sudanese refugees entering Israel", in *Haaretz*, 24 September 2007, <http://www.haaretz.com/print-edition/news/1.229901>.

¹⁶ In April 2008, the Ministry of Interior began withdrawing the B1 visas of about 50 percent of Eritreans, who were (falsely) found to be Ethiopians. In 2014, the Ministry of Interior revoked the B1 visas of most remaining Eritreans who still held that status. See Refugees' Rights Forum, *Asylum-Seekers and Refugees in Israel: May 2010 Update* (Hebrew), cit.

¹⁷ At the time of this writing, approximately 40,000 asylum-seekers in Israel live with the 2A5 visa. This visa, which must be renewed every one or two months at the Immigration Authority, grants its Sudanese and Eritrean holders temporary protection from deportation. Beyond enabling its holder to reside in Israel, this visa does not grant its holder the right to work, housing, government assistance, welfare services, or medical insurance. Despite the fact that their visa clearly states "this permit is not a work permit" and their employment is *de jure* illegal, most asylum-seekers in Israel do work. They are usually employed in low-level, minimum wage service industry positions. Asylum-seekers manage to find work because the state committed before the High Court to refrain from fining employers of asylum-seekers following a petition filed by Israeli human rights NGOs. From time to time, Israeli government officials and PIBA inspectors threaten to begin fining employers of asylum-seekers. These steps are taken to ensure that asylum-seekers will struggle to find employment in Israel. Asylum-seekers who are desperate for work sometimes agree to work for less than minimum wage to survive. Roni Livneh, "Is It Permissible to Employ Asylum Seekers or Not?" (Hebrew), in *Kav LaOved*, 17 June 2014, <http://www.kavlaoved.org.il/?p=3935>.

them from acquiring refugee status. This basic right, reserved for asylum-seekers throughout the Western world and elsewhere, was seen as a threat by the State of Israel. The reason for this reluctance is explored below.

4. Between Israel and the UNHCR, between conditional release, temporary protection and RSD

From the early 1950s until 2001 the entire refugee status determination (RSD) process was in the hands of the UNHCR – the local UNHCR office would examine the asylum request and the final decision would be made at its Geneva headquarters. Since the establishment of the State of Israel in 1948 until the present day, only around 200 people have been granted refugee status, according to the Refugee Convention.¹⁸

In 2001, Israel's Ministry of Justice drafted a new regulation assigning the authority to determine whether to grant refugee status to asylum-seekers to the Israeli government. According to the new procedure, an intra-ministerial committee would make recommendations to the Minister of Interior, who would then make the final decision on each case forwarded to him. This limited the role the UNHCR had in the RSD process, restricting the international organization to interviewing asylum-seekers and examining the conditions in their country of origin, and based upon its findings make a recommendation to the Israeli intra-ministerial committee.¹⁹

In July 2009, as the number of foreigners in Israel increased, the Ministry of Interior assumed full responsibility for processing RSD applications and determining whether a person is entitled to refugee status. The first Israeli RSD officers were trained by the UNHCR and HIAS (the Hebrew Immigrant Aid Society), a Jewish refugee rights NGO, which has since harshly criticized Israel's asylum system.²⁰

¹⁸ Neta Moshe, *Procedures for Receiving Refugee Status in Israel* (Hebrew), Jerusalem, The Knesset Research and Information Center, 18 June 2013, <https://www.knesset.gov.il/mmm/data/pdf/m03216.pdf>. It should be noted however that applying for asylum did not provide much protection to the applicants and several people who were waiting for a reply from the UNHCR were deported from Israel to their homeland. However, there were instances in which the UNHCR was able to intervene and stop the deportation. One should note Palestinian requests for refugee status were handled by UNRWA – a unique UN organization established solely for handling Palestinians. Their decisions were not transferred to the State of Israel.

¹⁹ Yonatan Berman, *Until Our Hearts Are Completely Hardened. Asylum Procedures in Israel*, Tel Aviv, Hotline for Refugees and Migrants, March 2012, <http://hotline.org.il/?p=1316>.

²⁰ According to HIAS, Israel examines asylum claims in an unfair manner and its "[RSD] system is basically carved out to reject claims." See Lauren Gelfond Feldinger, "Seeking Asylum? No Spirit of Geneva Here", in *Haaretz*, 30 September 2012, <http://www.haaretz.com/jewish-world/jewish-world-features/1.467529>.

Since July 2009, the State of Israel has granted only forty-five people refugee status out of the 17,778 asylum claims submitted, a recognition rate of 0.25 percent.²¹ In 2011, the European Court of Human Rights ruled that Greece's asylum system was unfair due to its recognition rate of 1 percent (the lowest in the EU, but much higher than Israel's): "An asylum system with a rate of recognition not exceeding 1% is suspect *per se* in terms of the fairness of the procedure."²² Judged against this standard, the fairness and impartiality of Israel's recognition procedure and those who implement it is suspect and demonstrated the unfairness inherent to Israel's process.

Israel has achieved such a low recognition rate first and foremost because until 2013 it barred all Eritrean and Sudanese citizens from filing individual requests.²³ In addition, its investigation process is conducted with the intention of finding people who are not refugees, so that they can be deported. Hence, the interviews during the RSD process are carried out as interrogations, with the Ministry of Interior clerks shouting at asylum-seekers and accusing them of lying, among other tactics. In contravention of UNHCR guidelines, asylum claims are rejected on the grounds of slight inconsistencies, non-existent inconsistencies or due to an individual's inability to remember details that are not relevant to the asylum claim.²⁴ In other cases, the asylum requests are rejected based on faulty information about the country of origin.²⁵

Since 2013 Eritrean and Sudanese asylum-seekers have been allowed to file claims, but the dismally low recognition rate remains unchanged. To date, Israel has not recognized even one Sudanese national as a refugee out of a community of almost 9,000 people.²⁶ Israel examined only 45 of the 3,165 requests filed by Sudanese nationals and rejected them all.²⁷ To date, as far as Israeli human rights NGOs are aware, no claims of Darfuris have been rejected – Israel simply has not responded to any request filed by a survivor of the genocide in Darfur, even to asylum claims

²¹ Ilan Lior, "Israel has Granted Refugee Status to only Four Sudanese and Eritrean Asylum Seekers", in *Haaretz*, 19 February 2015, <http://www.haaretz.com/news/israel/1.643134>.

²² ECHR, Judgement in the case of *M.S.S. v. Belgium and Greece*, 21 January 2011, p. 105, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050>.

²³ Eli Shani et al., *No Safe Haven. Israeli Asylum Policy as Applied to Eritrean and Sudanese Citizens*, Tel Aviv, Hotline for Refugees and Migrants, December 2014, <http://hotline.org.il/?p=2362>.

²⁴ For example, a citizen of Myanmar had her asylum request rejected because she did not remember the name of an official in the university she had claimed to attend. See Yonatan Berman, *Until Our Hearts Are Completely Hardened*, cit., p. 33.

²⁵ For example, a gay asylum-seeker from Morocco was not granted refugee status in Israel because Morocco was deemed to be safe for gays. The RSD unit determined that Morocco is safe for gays because it found a Moroccan website that supports gay rights and because Elton John, who is openly gay, once performed in Morocco. See *Ibid.*, p. 36-37.

²⁶ Population, Immigration and Border Authority (PIBA), *Data on Foreigners in Israel. Summary for 2014* (Hebrew), cit.

²⁷ Ilan Lior, "Israel has Granted Refugee Status to only Four Sudanese and Eritrean Asylum Seekers", cit.

filed two years ago.²⁸ Compared with Israel's 0 percent recognition rate of Sudanese refugees, in 2013, 58.7 percent of refugee status claims filed by Sudanese citizens worldwide received a positive response.²⁹

Eritrean asylum-seekers have fared no better than the Sudanese. To date, Israel has granted only four Eritrean citizens refugee status, out of a community of 34,000.³⁰ Hundreds of asylum requests filed by Eritreans have been rejected because Israel does not consider national service evaders or defectors to be deserving of refugee status.³¹ By comparison, in 2013, 67.3 percent of refugee status claims filed by Eritreans worldwide received a positive response and another 15.8 percent received complementary protection.³²

Beyond the ideology guiding Israel's immigration policy mentioned above, it should be noted that the context within which Israel's RSD system operates is extremely hostile to the possibility of non-Jewish asylum-seekers remaining in Israel. On a daily basis, leading decision-makers, including the Minister of Interior and the Prime Minister, have declared that the overwhelming majority of those claiming asylum in Israel are "illegal work infiltrators" and not genuine refugees.³³ The people in charge of examining RSD requests have internalized this faulty logic. For example, the chair of the intra-ministerial committee, Adv. Avi Himi, insisted that a refugee is a person "who was persecuted in his country and that there is an objective danger to his life," thus setting a much higher standard than that stipulated in the Refugee Convention.³⁴ He also made the absurd claim that "15% of the asylum-seekers ask for protection because spirits are haunting them."³⁵

²⁸ Eli Shani et al., *No Safe Haven*, cit., p. 34.

²⁹ UNHCR, *Global Trends 2013*, Data Annex, Table 11, <http://www.unhcr.org/globaltrends/2013-GlobalTrends-annex-tables.zip>.

³⁰ Population, Immigration and Border Authority (PIBA), *Data on Foreigners in Israel. Summary for 2014* (Hebrew), cit. Ilan Lior, "Israel has Granted Refugee Status to only Four Sudanese and Eritrean Asylum Seekers", cit.

³¹ Eli Shani et al., *No Safe Haven*, cit., p. 31.

³² UNHCR, *Global Trends 2013*, cit.

³³ Barak Ravid, "Netanyahu: Israel has no asylum seeker problem - only illegal job immigrants", in *Haaretz*, 30 September 2014, <http://www.haaretz.com/news/israel/1.618505>. Gideon Saar, "We Will Not Surrender to Lies" (Hebrew), in *Israel Hayom*, 7 January 2014, <http://www.israelhayom.co.il/article/147359>.

³⁴ Article 1 of the Refugee Convention states that a refugee is a person who "owing to 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 Convention also states: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of 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." (Article 33). See *Convention and Protocol Relating to the Status of Refugees* (1951 and 1967), <http://www.unhcr.org/3b66c2aa10.html>.

³⁵ Tomer Zarhin, "Advisor to Eli Yishai: 15% of the Asylum-Seekers Claim that They Are Haunted by Spirits" (Hebrew), in *Haaretz*, 30 December 2011, <http://www.haaretz.co.il/news/>

5. The struggle over the 1954 Prevention of Infiltration Law

At this point it is important to focus on the struggle over the 1954 Prevention of Infiltration Law as part of our attempt to understand the asylum system, including its detention policies. This section will also enable us to broaden our perspective by understanding the complex relations between policymakers, the judiciary, human rights NGOs and the community affected by the law, the asylum-seekers.

From 2008, successive Israeli governments, first the Olmert government and then the Netanyahu government, attempted to push through an amendment to the 1954 Prevention of Infiltration Law that would allow Israel to hold asylum-seekers in administrative detention, that is, detention without trial or even an indictment. Successful lobbying by Israeli human rights NGOs prevented the passage of such an amendment until January 2012, when the Israeli parliament approved the third amendment to the Prevention of Infiltration Law. The amendment mandated three years imprisonment without trial for asylum-seekers from Eritrea and indefinite detention for asylum-seekers from enemy states, such as Sudan. The government began jailing asylum-seekers under this law only in June 2012 because it first had to expand the prisons holding asylum-seekers so it would be able to accommodate the detainees to be held under the amended law.³⁶

Israeli human rights NGOs filed a petition with the High Court of Justice against the amendment. In September 2013, the High Court ruled unanimously to void the law declaring that it disproportionately violated the right of "infiltrators" to liberty. The court ordered the state to immediately begin releasing all of the detainees – about 1,750 asylum-seekers were detained under the law at the time – and complete their release within ninety days.³⁷ Instead of releasing the asylum-seekers, however, the government began advancing a law through the parliament that would bypass the High Court ruling and allow Israel to continue to indefinitely detain asylum-seekers. After the petitioners turned to the High Court and demanded that the state be found to be in contempt of court, the Immigration Authority began releasing some of the detainees.³⁸ About 800 asylum-seekers in total were released before 10 December 2014, when the Knesset passed the fourth amendment to the Prevention of Infiltration Law.

The new law allowed Israel to continue detaining the asylum-seekers it had failed to release - in contravention of the High Court ruling - mandated the detention of asylum-seekers who enter Israel after the law came into effect and, for the first

education/1.1604904.

³⁶ Human Rights Watch, *Israel: Amend 'Anti-Infiltration' Law*, 10 June 2012, <http://www.hrw.org/news/2012/06/10/israel-amend-anti-infiltration-law>.

³⁷ Noam Sheizaf, "Israel's High Court nixes law allowing detention of asylum seekers without trial", in *+972 Magazine*, 16 September 2013, <http://972mag.com/?p=78948>.

³⁸ Omri Ephraim, "The Infiltrators Are Still in Prison: 'Work Extra Hours'" (Hebrew), in *Ynet*, 7 November 2013, <http://www.ynet.co.il/articles/0,7340,L-4450763,00.html>.

time, affected asylum-seekers who entered Israel in the preceding decades. Under the new law, asylum-seekers who entered Israel were to be detained without trial for a year in Saharonim prison. Following this period of detention, they were to be transferred to a semi-open detention camp and held there indefinitely or until they “agree” to be deported to their country of origin. The law also affected asylum-seekers who lived inside Israel: when they came to renew their conditional release visa, they could be ordered to report to indefinite detention in the new semi-open detention facility, Holot. This new facility, constructed across the road from Saharonim prison, near the border with Egypt, is operated by the Israeli Prison Services. The detainees in the facility are not allowed to work and, though they are free to leave during the day, are required to take part in three daily roll calls, introduced to prevent them from venturing too far from the facility.³⁹

In September 2014, Israeli human rights NGOs persuaded the High Court to void the law on the grounds that it disproportionately violated the right of “infiltrators” to liberty, autonomy and freedom of movement. Significantly, it was the first time in Israel’s history that the High Court voided the same law twice. The High Court gave the state ninety days to draft a modified version of the law that would meet the standards stipulated in Israel’s Basic Law: Human Dignity and Liberty. If a new law failed to be passed within ninety days the government would have been compelled to shut down Holot and release its detainees.⁴⁰

The government used the ninety days to pass a new law, which came into force on 17 December 2014. This amendment to the Prevention of Infiltration Law mandates three months imprisonment without trial for the few asylum-seekers who managed to cross the border fence with Egypt after the law came into effect. After this period of detention in Saharonim prison, the asylum-seekers are transferred to the Holot facility for twenty months of detention. According to the new law they have to sleep in the facility, participate in one daily roll call and are forbidden from working in Israel while detained.⁴¹ Most of the people currently held under this law are asylum-seekers who entered Israel more than five years ago and were ordered to report to detention in Holot when they came to renew their conditional release permit at the Immigration Authority. Following the twenty months of detention, the asylum-seekers will be released back into Israeli society.

The official purpose of all of these laws is to deter future “infiltrations,” the logic being that if asylum-seekers know that they will spend prolonged periods in detention in Israel without being able to work, they will not attempt to enter the country. Another stated goal of these laws is to actively encourage asylum-seekers

³⁹ Elizabeth Tsurkov, “Knesset Passes Revised Law for Detention of African Asylum Seekers”, in *+972 Magazine*, 10 December 2013, <http://972mag.com/?p=83395>.

⁴⁰ Reuven Ziegler, “The Israeli Supreme Court’s Decision on Detention of Asylum Seekers”, in *MigRefLaw* blog, 29 September 2014, <http://wp.me/p3yZb7-8p>.

⁴¹ Association for Civil Rights in Israel (ACRI), *Anti Infiltration Law 3.0: Continuing to Ignore the High Court of Justice*, 19 December 2014, <http://www.acri.org.il/en/?p=8828>.

to leave Israel "voluntarily."⁴² Officially, Israel follows UN recommendations to not deport Sudanese and Eritreans back to their homelands. Instead, the government has resorted to instituting abusive detention laws to pressure asylum-seekers into "agreeing" to leave Israel.

Due to the above-mentioned measures, over 9,000 asylum-seekers have left Israel since 2013. Most have returned to their homelands, while several hundred have moved to Europe and North America, and about 1,000 to Rwanda and Uganda, two African countries that have agreed to receive "infiltrators" from Israel in exchange for aid from Israel.⁴³ In its recent report, the Hotline for Refugees and Migrants focused on the extremely difficult living conditions faced by asylum-seekers who have "voluntarily" gone to Uganda, Rwanda and Sudan.⁴⁴ This data was recently confirmed by one of the authors who has recently interviewed Eritreans and Sudanese who left Israel for Uganda and Rwanda. According to the interviewees the measures implemented by Israel compelled them not only to risk their lives by leaving Israel, but also sentenced them to a vicious cycle of never-ending destitution mainly because both Uganda and Rwanda do not provide them with adequate conditions to live, nor do they grant them asylum-seekers' status. These measures also provoked acts of peaceful resistance among asylum-seekers remaining in Israel and led to a widespread sense of desperation among them.

6. Asylum-seekers' perceptions of Israel's policies: between hopelessness and struggle

Most African asylum-seekers live in and around Tel Aviv, Israel's largest city. Since the vast majority of them earn the minimum wage or even lower, they can afford to live only in the poorest neighbourhoods. Hence, about 30,000 of them reside in the rundown districts of south Tel Aviv, specifically the Shapira, Hatikva and Neve Sha'anán neighbourhoods. Naturally, the higher concentration of people in these impoverished and neglected areas has resulted in tension and violence. In turn, these tensions have been exploited by elected Israeli officials and ministers, such as MK Miri Regev, who referred to asylum-seekers as "a cancer in our body," and former Minister of Interior Eli Yishai, who has made many vitriolic, racist statements inciting feelings against asylum-seekers, labelling them as "infiltrators," "criminals," a "demographic threat" and worse. This incitement has led to a significant increase in hate crimes against Africans in Israel since 2012.⁴⁵

⁴² Ibid.; Human Rights Watch, *Make Their Lives Miserable: Israel's Coercion of Eritrean and Sudanese Asylum Seekers to Leave Israel*, 9 September 2014, <http://www.hrw.org/node/128687>.

⁴³ Adi Drori Avraham, Sigal Rozen, Nimrod Avigal, *Where there is No Free Will. Israel's "Voluntary Return" Procedure for Asylum-seekers*, Tel Aviv, Hotline for Refugees and Migrants and ASSAF, April 2015, <http://hotline.org.il/?p=2742>; Population, Immigration and Border Authority (PIBA), *Data on Foreigners in Israel. Summary for 2013* (Hebrew), January 2014, <http://bit.ly/PKOUzm>.

⁴⁴ Adi Drori Avraham, Sigal Rozen, Nimrod Avigal, *Where there is No Free Will*, cit.

⁴⁵ Elizabeth Tzurkov, "Cancer in Our Body". *On Racial Incitement, Discrimination and Hate Crimes against African Asylum-Seekers in Israel, January-June 2012*, Tel Aviv, Hotline for Refugees and

Conversations and interviews with asylum-seekers in Israel reveal a great deal of anxiety, desperation and an overall sense of hopelessness. As has been demonstrated in this article, the Israeli policy toward asylum-seekers had changed over the years due to legislation, legal battles and random decisions made by the Ministry of Interior. Many asylum-seekers expect Israel to be an orderly and law-abiding country and thus perceive these changes in policy and the sometimes random abuse they endure at the hands of the Ministry of Interior to be part of an overall pattern or policy.

The constant changes in laws and regulations confuse many asylum-seekers, who struggle to understand the dynamics between the different centres of power in Israel – the High Court, the Knesset, the Ministry of Interior, the government, and civil society organizations. Many are unable to understand why they are kept in detention if the High Court has voided the laws mandating their detention. Following the abrogation of two laws and the passing of three different version of the Prevention of Infiltration Law, there is a growing sense of wariness, if not outright distrust, of Israel's democratic institutions. A common perception among asylum-seekers is that the racist politicians control everything in the country and therefore that nothing can stop them from achieving their goal – expelling all asylum-seekers from Israel. Believing their expulsion to be the ultimate goal of Israeli policy, asylum-seekers reject Israel's official characterization of the emigration of about 9,000 asylum-seekers in the past three years as "voluntary departures." The testimonies of those who have left or "agreed" to leave under this scheme support this assertion: they repeatedly state that they had no choice in the matter – it was either prolonged detention in Israel, return to their country of origin, or resettlement in Uganda or Rwanda.⁴⁶

Due to the hostility of the Ministry of Interior towards asylum-seekers and the abysmally low recognition rates, asylum-seekers have lost faith in Israel's asylum system. Since 2013, when the Israeli government began allowing Sudanese and Eritrean nationals to file individual asylum claims, only 5,573 did so.⁴⁷ This is because they believe they have no chance of receiving refugee status in Israel and some worry that having their request rejected will deprive them of even the few rights they enjoy in Israel and lead to their forcible expulsion.

Between 2007 and 2013, several protest campaigns against Israeli policies towards asylum seekers were initiated and led by Israelis, many of which drew several hundred demonstrators.⁴⁸ However, with the growing pressure by the Israeli government,

Migrants, July 2012, <http://hotline.org.il/?p=1750>.

⁴⁶ Adi Drori Avraham, Sigal Rozen, Nimrod Avigal, *Where there is No Free Will*, cit.

⁴⁷ Ilan Lior, "Israel has Granted Refugee Status to only Four Sudanese and Eritrean Asylum Seekers", cit.

⁴⁸ The only exception was the Eritrean demonstration held in 2008 when hundreds of Eritrean with white masks led a peaceful protest against Israeli policies. See Ruth Eglash, "Eritreans want recognition as refugees", in *The Jerusalem Post*, 16 December 2008, <http://www.jpost.com/page.aspx?pageid=7&articleid=124814>.

asylum-seekers took the lead. In December 2013, after the government passed the fourth amendment to the Prevention of Infiltration Law, asylum-seekers who were detained under the voided third amendment were told they would be released after the High Court ruling from September 2013. Instead, they were loaded onto buses and transferred from Saharonim to the newly constructed Holot detention facility across the road, where they were to be held indefinitely.

In response, about 150 Sudanese asylum-seekers launched a hunger strike and then decided to march to Jerusalem to protest against their prolonged detention without trial, an act of protest that became known as the March for Freedom.⁴⁹ On their way to Jerusalem dozens of Israeli supporters joined, yet the leadership of the protest remained in the hands of the Sudanese. On 17 December, the march ended in front of the Knesset, where Immigration Authority inspectors beat and arrested the peaceful protestors who participated in the march.⁵⁰ The Sudanese marchers were sentenced by the Ministry of Interior to three months' incarceration in Saharonim as punishment, the maximum allowed under the law. During their punitive imprisonment, the marchers launched another hunger strike that lasted almost three weeks.⁵¹

On 19 December 19, two days after the march had ended, another group of Holot detainees, most of them Eritreans, embarked on a second March for Freedom. Immigration Authority inspectors ended the march a few kilometres from the facility and resorted to such extreme violence that several of the marchers required medical treatment after their arrest.⁵² In the end, the Eritrean marchers were punished in the same fashion as the first protestors: three months in Saharonim, after which they were transferred back to Holot.

As mentioned, the fourth amendment to the Prevention of Infiltration Law, unlike the previous (voided) amendment, also applied to asylum-seekers residing in Israel. The marches of asylum-seekers detained in Holot and the summoning of asylum-seekers inside Israel to indefinite detention sparked a protest movement among asylum-seekers residing in Israeli cities. Thousands of asylum-seekers took part in protests held in Tel Aviv, Eilat, the Knesset and the Holot facility, and held a three-day strike during which most asylum-seekers in Israel stopped working. The largest protest, held in Rabin Square in central Tel Aviv on 5 January 2014, was attended

⁴⁹ Daniel Baltman, "After Fleeing Detention, African Migrants March toward Jerusalem", in *Haaretz*, 16 December 2013, <http://www.haaretz.com/news/israel/premium-1.563811>.

⁵⁰ Haggai Matar, "Police Arrest Asylum Seekers Who Left "Open Prison", Marched to J'lem", in *+972 Magazine*, 17 December 2013, <http://972mag.com/?p=83866>.

⁵¹ Hotline for Refugees and Migrants, *Israeli Prison Service Adopts Severe Measures to Crush the Hunger Strike in Saharonim; About 50 Asylum-Seekers Continue to Strike for 11 Days Now*, 16 January 2014, <http://hotline.org.il/?p=1307>.

⁵² Hotline for Refugees and Migrants, *Voices from Prison: Refugees Explain Why the Decided to Protest*, 2 March 2014, <http://hotline.org.il/?p=1298>; *Extreme Violence Used against Asylum-Seekers who Marched to Protest their Detention* (Hebrew), 9 January 2014, <http://hotline.org.il/?p=652>.

by about 30,000 asylum-seekers.⁵³ After this wave of large protests, many asylum-seekers expected the Israeli government policy towards them to change, but this change did not materialize. Discouraged by the lack of positive results, the protests began to decrease in frequency and size. At the same time, the leaders of protest movement outside of detention were ordered to report for detention in Holot.

In June 2014, protests were renewed in Holot following deterioration in the detention conditions and further restrictions placed on the freedom of the detainees. The detainees stopped taking part in the three daily roll calls they were obligated to attend and demanded to be released from detention.⁵⁴ The Israeli Prison Services attempted to end the strike and protests by transferring the leadership of the detained asylum-seekers to Saharonim prison.⁵⁵ On 27 June 2014, about 750 asylum-seekers walked out of the Holot facility and marched to the border with Egypt, demanding that the international community intervene and help them. Israeli soldiers prevented the marchers from reaching the Egyptian border and the asylum-seekers then set up a protest camp near the location where they had been stopped. After two days at the encampment, Immigration Authority inspectors and Police Special Forces once again resorted to excessive force, aggressively detaining the asylum-seekers at the protest camp and transferring them back to prison. In the hurried legal proceedings that followed, Ministry of Interior clerks sentenced the marchers to three or six-month detention in prison for participating in the protest.⁵⁶ As of this writing, this was the last protest held by asylum-seekers in Israel, giving way to a general mood of hopelessness in the refugee community inside and outside of detention.

Conclusion

This short article has traced and analysed Israel's policies towards asylum-seekers from 2002 to 2014, a period during which the number of asylum-seekers in Israel increased dramatically from a mere handful at the beginning of the century to over 60,000 in 2012. It focused on Israel's newly developed asylum system and argued that, although it was erected in a non-systematic chaotic manner, it was consistent with the central norms of Israel's citizenship and immigration process.

⁵³ Activestills, "A Week in Photos: African Asylum Seekers Strike for Their Rights", in *+972 Magazine*, 10 January 2014, <http://972mag.com/?p=85344>.

⁵⁴ Hotline for Refugees and Migrants, *Asylum Seekers at Holot Detention Center Launched a New Protest: "We Demand Our Freedom"*, 16 June 2014, <http://hotline.org.il/?p=1783>.

⁵⁵ Hotline for Refugees and Migrants, *Leaders of the Refugee Protest at Holot Transferred to Saharonim Prison*, 24 June 2014, <http://hotline.org.il/?p=1781>.

⁵⁶ Elizabeth Tsurkov, "From One Prison to Another". *Holot Detention Facility*, Tel Aviv, Hotline for Refugees and Migrants, June 2014, <http://hotline.org.il/?p=1649>.

Moreover, it was argued that asylum-seekers in Israel have been subjected to often-changing policies, detention and practices intended to coerce them into leaving Israel. The aim of all these policies is to ensure that the number of non-Jewish refugees who reach, enter and remain in the country will be as low as possible. Israeli governments faced obstacles in implementing the most draconian components of this policy, in the form of repeated High Court rulings that forced the state to allow asylum-seekers to work and struck down laws mandating prolonged detention without trial for asylum-seekers. Over and over again, the Israeli government managed to circumvent the rulings and successfully pushed through measures that helped to achieve its goal of ridding Israel of asylum-seekers. Attempts by asylum-seekers to change the policy through mass protests, work strikes and hunger strikes have failed, leaving asylum-seekers desperate and despondent.

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