**Submission by the Hotline for Refugees and Migrants (HRM)**

**To the Committee on Human Rights**

**International Covenant on Civil and Political Rights (ICCPR)**

**LOIPR - Israel**

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The Hotline for Refugees and Migrants (HRM) is a non-governmental and non-profit organization, established in 1988, that aims to defend and further the rights of refugees and migrants, and to prevent trafficking in person in Israel. The HRM is the only human rights organization in Israel that holds a permit to visit asylum seekers and migrants inside detention facilities, and its activists visit detainees several times a week since 1998.

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This submission will focus on the following list of issues:

1. **Discrimination against asylum seekers in Israel**
   1. **Administrative Detention of Asylum Seekers Implicated in Criminal Activity**
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7. **Discrimination against asylum seekers in Israel**

The first amendment in article 2 states that ***"[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status***".

There are solid indications that Israelis authorities use discriminative policies against African asylum seekers.

1. **Administrative Detention of Asylum Seekers Implicated in Criminal Activity**

The Israeli authorities establish a discriminatory administrative track to indefinitely detain foreigners without trial, at times even contravening court rulings. This is in spite of the juridical ruling that Israeli criminal law does not permit tougher punishment against foreign citizens merely for being foreign. The legal system – albeit always partially – guaranteed the principle of equality in criminal law to any person suspected of a crime, regardless of their legal status. The High Court of Justice (HCJ) proclaimed that this should not be allowed and that “the ethnic origin or group affiliation of a defendant are irrelevant to the circumstances of the criminal offense, and are not an element of the external circumstances” of the case, adding that increased penalties contradict the principle of equality and may lead to the stigmatization of an entire group.

This separate track created a dangerously discriminatory distinction between residents, citizens, foreigners who could be deported and foreigners who could not be deported from Israel. The members of the latter group are in Israel, either lawfully or unlawfully, with a temporary conditional release permit based on the authority of the Minister of Interior (MOI) to grant stay permits under article 2A5 to the 1952 Entry to Israel Law. As opposed to tourists or migrants, these individuals cannot be removed from Israel since they are asylum seekers, a situation that is unlikely to change in the foreseeable future.

As of early 2018, there are 26,563 Eritrean nationals as well as 7,624 Sudanese nationals left in Israel following the departure of about 20,000 others who left back to Africa during the last four years. In addition to these approximately 34,000 adults, there are also 6,500 children.

Often, when an asylum seeker is being a suspect of committing a crime, he is not being indicted, but administratively incarcerated for an indefinite period of time, by a decision of an MOI border control officer. This unpropotional punishment does not comply with the third amendment of the ninth article that states that ***"[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release***".

Until September 2012, Israeli authorities did not issue any written procedure regarding asylum seekers considered to be “implicated in criminal activity.” This absence of written regulations, however, did not prevent the MOI from “punishing” asylum seekers when there was administrative indications of their involvement in crime. In this context, an administrative indication means that a border control officer is under the impression that a person is involved in crime not because they were tried and convicted, but because there is administrative evidence against them. Administrative evidence is usually significantly less substantial than the minimum burden of proof required in criminal proceedings.

Since 2014, applies the administrative “Guideline for Handling Infiltrations Involved in Criminal Proceedings”. The implementation of the Guideline against those who entered Israel illegally and were “implicated in criminal proceedings” allows the authorities to revoke stay permits and issue removal and detention orders under the Entry to Israel Law. While the removal order is fictitious (due to the inability to deport asylum seekers), the detention order is wholly tangible. It should be pointed out that while the Guideline was based, supposedly, on provisions found in the Entry to Israel Law, its directives apply only to those who entered illegally, i.e., only to those defined as “infiltrators.” According to this Guideline, a person can be held for an indefinite period even if there is not enough evidence to indict them and they are not entitles to legal representation funded by the state in these cases

The legal and public work of HRM on this matter, along with the work of the Public Defender, the Association for Civil Rights in Israel (ACRI), legal clinics and private lawyers, has led to a significant reduction in the utilization of this practice, and is likely applied today in a few dozen cases. At the same time, without dismissing the success of curtailing the policy of administrative detention, it is important to highlight that despite the inherent problems in utilizing administrative tools to deprive persons of liberty for prolonged periods, this policy remains in place, and for years, courts have avoided deliberating and ruling on the substantive questions raised in the legal proceedings. Thus, asylum seekers have continued to be detained under a practice whose legality and constitutionality remain uncertain.

**b. Illegal deductions from the minimum wage - Deposit Fund for Asylum Seekers**

Since May 1st 2017, under the Anti-Infiltration law, asylum seekers who entered Israeli through the Egyptian desert must deposit a fifth of their wages into a fund they can only access if they leave the country and if they leave the country on the date they are instructed to leave. Otherwise, some of the funds are confiscated. Their employers also have to deposit 16 percent of the pension and compensation allowances asylum seekers are entitled to into the same fund. This “Deposit Law” also stipulates that asylum seekers can be fined, via deduction from the fund, if they are ordered to leave the country and do not do so within the timeframe specified.

Asylum seekers already pay the highest taxes in the employment market, and now take home a monthly paycheck that is only 65-70 percent of what they earned. The amendment further impoverishes an already weak community and severely damage people’s ability to survive. A petition served by the NGO's is still pending.

1. **Discrimination in RSD procedures and obstacles in filing asylum requests**

There are great difficulties for African asylum seekers to submit the reasons against their deportation and to submit a request for Refugee Status Determination (RSD). Furthermore, after submitting this request, many asylum seekers do not receive an answer for long periods and even years.

Since the start of 2016, Israel has seen a sharp rise in the number of Ukrainian and Georgian citizens applying for asylum, in order to receive a legal work permit Israel. The rise in the number of applicants on one hand, and the lack of suitable reorganization of the RSD unit on the other, have led to the unit being extremely overloaded - as can be seen in the queues winding around the area of the office. Starting from the middle of 2016, asylum seekers have had to wait all day, and sometimes all night, days after day, outside the office in order to submit their application.[[1]](#footnote-1)

**2. Human trafficking and Forced labor**

The first and third amendments in article 8 states that (1) *"[n]o one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited"*, and that (3.a) *"[n]o one shall be required to perform forced or compulsory labour".*

Yet, there is a suspicion for human trafficking of people from Ukraine and Georgia to Israel, and for employment in slavery-like conditions in construction.

1. **Suspicion of Human trafficking of Ukrainians and Georgians to Israel**

Since 2016 there has been a sharp rise in the number of Ukrainians and Georgians applying for asylum in Israel. Data collected by HRM shows that Israeli entities, including human resource companies, are involved in this rise by spreading misinformation in the Ukraine and Georgia about the possibility of working legally in Israel, causing about 20,000 Ukrainians and Georgians to arrive in Israel. The companies and individuals that bring them, charge large sums of money as agents’ fees, and they may also be involved, to varying degrees, in selling fake documentation. At the same time, due to the backlog at the MOI’s Refugee Status Determination Unit (RSD), the processing of asylum requests is extremely slow. Despite the fact that the MOI has been handling services for an ever growing population for a long time, the necessary changes have yet to be made. The dysfunctional asylum system is therefore being exploited to bypass the regulatory system for bringing migrant workers to Israel. This is assumingly due to the cap on the number of migrant workers the system allows coupled with a significant demand for workers.[[2]](#footnote-2)

1. **Suspicion of Employment in Slavery like Conditions in Construction**

There is a suspicion of employment in slavery like conditions in the Turkish construction company Yilmazlar, under which about 1,000 construction workers are currently employed in Israel. Their work is part of a temporary order that is being continuously reapproved by the Israeli government (for more than a decade now). The government recently allowed six additional companies to “import” 1,000 construction workers each in order to lower costs and accelerate construction.

Representatives of The HRM have collected testimonies from tens of Turkish construction workers who left Yilmazlar over the past 17 years. Yilmazlar received a significant part in a tank-enhancement agreement signed between Turkey and Israel. As part of the “offset” agreement being renewed occasionally, Israel had committed to grant temporary work permits to hundreds of Turkish construction workers, whose salaries are being paid in their country of origin. In order to follow the agreement, Yilmazlar received an exclusive license to bring workers from Turkey and to hire them in construction sites across Israel.

Government restrictions do allow company employees to move between different companies in the construction industry in case their rights are being denied from them, however the authorities avoid any type of investigation in these cases. This agreement creates a binding situation between the employer and its employees. Even after the HCJ determined that such binding agreements are “a type of modern slavery” and banned them, it has yet to disqualify the specific agreement between Yilmazlar and its employees.

In 2004 The HRM, together with Kav La’oved, filed a petition to the HCJ in order to stop allowing Yilmazlar to hire employees in binding conditions. The verdict rejecting the petition included the following:

"The petitioners claim that Yilmazlar employees are suffering from harsh and unlawful working conditions… employees are being required to sign an open IOU being held by Yilmazlar and potentially allowing it to seize all of the employee’s funds and property without any further stipulations, and by any sum it sees right. The petitioners add that upon their arrival to Israel, employees’ passports are taken away from them; that in the first two months of their work Yilmazlar does not transfer their salaries; that they work for extremely long hours each and every day, sometimes close to a full 24-hour day straight; that they are not being compensated for working overtime; that in some cases employees are prohibited from leaving the site after working hours without a permission from their manager, or required to return to their dormitories no later than 22:00; that in some working sites workers are banned from having a cell phone; that in case any complaint is being raised by an employee, he is fined and threatened to be fired and sent back to Turkey; and that the company holds occasional “threatening conventions.”

Yilmazlar countered the employee’s testimonies, presented by the petitioning organizations, with its own contradicting depositions. Judge Edmond Levy stated that “When discussing the rights of employees, you cannot find a more blunt violation of their rights than housing them in such inhumane crowdedness as described above […] I am standing with the comments given by the disctrict court in the matter of the harsh conditions in which these employees are being held – hundred people living crowdedly in one house.”

In February of 2016 The HRM’s representatives managed to trace in Givon prison protocols of court deliberations in which 15 construction workers reported they had “escaped” working under Yilmazlar, while only two of them asked to file a complaint against the company.

The court saw it right to transfer these protocols to the ministry of justice’s legal aid department in order to examine the option of this being a case of victims of slavery conditions. Adv. Michal Pomerantz who interviewed the employees found their testimonies to be reliable and recommended the national head officer of investigations to acknowledge them as victims of slavery conditions.

**3. Arrests and detentions of asylum seekers as a method deterring migrant and asylum seekers from staying in Israel**

The first amendment in the ninth article states that ***"[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention***".

There are about 2,400 migrants and asylum seekers are being held in detention facilities; many of them have been detained for multiple months and even years.

The detention of migrants in Israel is regulated in the provisions of the Entry of Israel Law and Anti-Infiltration Law. Detention is the dominant tactic in Israel’s policies concerning immigration to Israel. Detention and incarceration serve as a method of managing and deterring migrant and asylum seekers from staying in Israel for long durations. The last amendments to the Anti-Infiltration Law explicitly refer to detention as a method of “convincing” migrants to leave Israel, and as a way to deter migrants and asylum seekers from coming to Israel.[[3]](#footnote-3)

**4. Overcrowdings in the Israeli prisons**

The first amendment in the tenth article states that *"[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person*."

On June 13, 2017, the HCJ ruled in favor of the petition filed by ACRI and the Academic Center for Law and Business in Ramat Gan, decreeing that within nine months, authorities must provide every detainee with 3 square meters of living space (32 square feet) excluding the area of the toilet and shower, and within 18 months, the IPS must provide every detainee with 4 square meters (43 square feet) of living space excluding the area of the toilet and shower, or 4.5 square meters (48 square feet) including the area of the toilet and shower.[[4]](#footnote-4)

As the report concerning the conditions of detention and imprisonment in Israeli Prison Services carceral facilities for the year 2016 shows (hereinafter “the Public Defender’s report”), “the extreme overcrowding prevalent in Israeli prisons constitutes a grave violation of the rights of the incarcerated, including their dignity, privacy and health. This overcrowding has negative ramifications on the physical and mental state of the detainee and his interaction with his environment, and it does not provide space for even minimal privacy. In a large share of the carceral institutions, the overcrowding further exacerbates the already difficult living conditions, including: the heat and airlessness; subpar hygiene and sanitation conditions; lack of separation between the shower and toilet; inadequate eating setups in cells; lack of space to store property, and more.”[[5]](#footnote-5)

**Overcrowding in the Saharonim prison for asylum seekers**

From data collected throughout 2017, similarly to information collected in years prior, each room houses ten detainees arranged on five bunkbeds at maximum capacity. The number of detainees per room is in contravention of the official plan of the prison the Bar Association reported on in 2014,[[6]](#footnote-6) which indicated that after refurbishment, the number of detainees per cell would not exceed five people. In addition, the number of detainees to a room violates IPS regulations and the Israeli Penal Code, which states that “there will be no more than four beds for prisoners in each cell.”[[7]](#footnote-7)

This results in a living space of between 2.2 square meters to 2.8 square meters only (23.7-30 square feet), half of what IPS regulation dictate and a quarter of the living space provided to detainees in other developed countries.[[8]](#footnote-8) Even when the cells are not fully occupied, the empty beds take up space and contribute to the overcrowding of the room.

The findings in the Public Defender’s report about the overcrowding in Saharonim matches the data collected by HRM representatives during 2017. The authors of the Public Defender’s report mentioned that to meet the minimum requirement of 4.2 square meters per detainee (54.2 square feet), no more than four detainees must be held in each cell.[[9]](#footnote-9)

**Overcrowding in Cells in the Holot Facility for asylum seekers – HCJ 4602/16**

The Holot Detention Facility is made up of three main divisions, each of them made up of four wars of cells that are divided into 28 rooms each. Every room has five bunkbeds and ten lockers with locks. Information collected by the Hotline indicates that ten people are held in each cell. When detainees are released, the IPS reduces the number of occupied cells.

Cell measurements by the detainees in Holot indicate that the size of every room is 3.55 meters by 12 meters, equaling 46.15 square meters (about 500 square feet). This equals to 4.61 square meters per detainee (about 50 square feet), and constitutes a deviation from National Outline Plan 46 under which Holot was established. In two of the appendices to the Outline it was stated that the number of detainees in each room will not exceed six.[[10]](#footnote-10) All the respondents interviewed by Hotline representatives reported that their cells were at full occupancy with ten detainees sharing the room.

On June 13, 2017, the HCJ ruled unanimously that the current situation under which ten detainees are held per room is in contravention to National Outline Plan 46, as well as the proper interpretation of the purpose of the facility, which wishes to decrease as much as possible the harm done to the rights of the detainees, and in light of conditions in facilities around the world. The Court ordered the State to reduce the number of detainees per cell to six within nine months from the day the ruling was issued, the date during which the Holot facility was shut down.

**5. Deportation of asylum seekers from Israel**

Article 13 states that "***an alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority***".

As mentioned before, as of early 2018, there are 26,563 Eritrean nationals as well as 7,624 Sudanese nationals left in Israel following the departure of about 20,000 others who left back to Africa during the last four years. Whereas in 2015 1,507 Eritrean and Sudanese nationals left for the "third countries" Uganda and Rwanda, in 2016 that number went down to 836 and in 2017 to 674[[11]](#footnote-11). In the first two months of 2018 only 104 left for "third countries", a number testifying that there's no reversal in trend compared to last year, despite the threats of indefinite detention in Saharonim[[12]](#footnote-12).

In early 2018, the MOI has published a new "procedure for deportation to a third country", according to which those who are yet to file for asylum or whose asylum claim was rejected will be required to leave Israel for an undisclosed third country. Those who refuse, will be jailed in Saharonim prison after 60 days if called from a city center or after 30 days if called from the Holot facility on the Egyptian border[[13]](#footnote-13).

In an interview published on February 28, 2018, the head of enforcement in the Immigration Authority, Yossi Adelstein clarified that the Authority intends to expel 20,000 people from Israel. In the first stage, 12,000 Eritrean and Sudanese nationals who are yet to file for asylum or whose asylum claim was rejected, while in the second stage 8,000 Eritrean and Sudanese nationals whose asylum bids remain open will be expelled after having their bids summarily closed. According to Adelstein, 900 Eritrean and Sudanese nationals have already been required since January to choose whether to leave for a third country willingly or be imprisoned in Saharonim and eventually expelled by force. The period of time in which they can choose has already ended for 100 of them, and they've been imprisoned in Saharonim.[[14]](#footnote-14)

During the last four years, the HRM closely monitors the fate of those who leave for the two "secret" countries Rwanda and Uganda. We have been unable to monitor all 4,000 Eritreans and Sudanese who have, according to the Immigration Authority, been sent there, but human rights organizations, alongside independent academics managed to gather 125 testimonies of Eritrean and Sudanese nationals who have left for the two third countries. The UNHCR has gathered an additional 80 testimonies of asylum seekers who left for Rwanda, were smuggled into Uganda, and then managed to survive the dangerous journey to Europe, where they were interviewed[[15]](#footnote-15). A further 21 interviews were published in "Haaretz" newspaper[[16]](#footnote-16). The combined interviews and affidavits testify that at least 226 Eritrean and Sudanese nationals who have "willingly" left for third countries have been interviewed.

The testimonies were collected at different times from people who boarded different flights for both destinations, but the stories are almost identical: their Israeli travel documents are taken from them as soon as they reach the destination country. With their arrival to Rwanda, they were forced to illegally cross the border to Uganda per the orders of the local official hired by Israel to collect their papers. Those who left for Uganda were not required to leave the country immediately, but they were also unable to formalize their status once it was discovered they came from Israel.

A majority of the asylum seekers are aware that there's no legal way to remain in Uganda or Rwanda and therefore begin to plan their journey to Europe while they're still in Israel. Those who do not know, find out the hard way and escape from the third countries after being arrested several times and paying high ransoms for their release.

Since the beginning of 2018, 447 people have departed "voluntarily", 398 Eritrean and 49 Sudanese nationals. 104 of them left for Rwanda or Uganda, and 102 left for their home countries. As of today, 300 asylum seekers are being detained in Saharonim prison for refusing to depart "voluntarily".[[17]](#footnote-17)

In too many testimonies, the local officials appointed by Israel to receive those departing for third countries, "Clever" in Rwanda and "Mikele" in Uganda, are those who charge the asylum seekers money in return for their smuggling out of the third countries.

1. **Birth Registration of Foreign Children**

Article 24. 2. States that ***"Every child shall be registered immediately after birth and shall have a name."***

For decades, Israeli hospitals were instructed not to accept a declaration of fatherhood in cases where one of the parents was not an Israeli citizen and in most cases no birth certificate was provided for the parents. In many cases, even providing a "notification of birth" was conditioned on full payment of the birth expenses to the hospital.

In 2004 ACRI filed a petition on behalf of an Israeli citizen that had a daughter with his Phillipina spouse and the MOI refused to recognize and register his daughter, as his daughter, leaving the child, as well as her mother, statusless in Israel. The MOI required that the couple will perform a very expensive DNA test in order for the family court to confirm that the child is the biological daughter of her father. In June 2011, the HCJ accepted the petition, claiming that the requirement of DNA test should be a last resort, because the MOI does not take into consideration the high cost of the DNA test and the long months it takes to be completed. The court also claimed that by refusing to accept the fatherhood declaration of foreigners, the MOI labels a large population as not trustworthy (HCJ 10533/04 verdict dated June 28, 2011).

In article 66 of the verdict, the HCJ instructed:

"Hospital clerks should grant a notification of birth to every couple and write in it all the details provided by the couple, including the identity of the father according to the fatherhood declaration presented to them".

This absolute decree from the court is valid for every birth in Israel regardless of the marital status of the parents, regardless of their legal status in the country and even if they have no identification papers. The clerks must register the details provided to them by the parents present at the birth and provide them with a notification of birth.

Despite this verdict, during the last seven years as well, human rights organizations in Israel constantly receive complaints from foreign parents, especially asylum seekers, that are being refused notifications of birth contingent upon payment of all medical expenses. Even when providing the notification of birth, many clerks, up until now, are refusing to register the name of the father on the notification. This has happened even when human rights activists confront them with the verdict which obliges them to do so.

1. # HRM, Knocking at the Gate - Flawed Access to the Asylum System due to the influx of applicants from the Ukraine and Georgia, September 2017: <https://hotline.org.il/en/publication/knocking-at-the-gate/>

   [↑](#footnote-ref-1)
2. # For more information please see: HRM, “Through Hidden Corridors” New trends in human trafficking which exploit the asylum system in Israel, September 28, 2017: <https://hotline.org.il/en/publication/through-hidden-corridors-new-trends-in-human-trafficking-which-exploit-the-asylum-system-in-israel/>

   [↑](#footnote-ref-2)
3. For more information please see: HRM, Prisons Monitoring Report 2017, March 2018: <https://hotline.org.il/wp-content/uploads/2018/03/WEB-Eng-HRM-Prison-Monitoring-Report-2017-Final.pdf> [↑](#footnote-ref-3)
4. HCJ 1892/14 *The Association for Civil Rights in Israel vs. the Minister of Internal Security.* Accessible in Hebrew at: <https://www.acri.org.il/he/30843> [↑](#footnote-ref-4)
5. See footnote 3. [↑](#footnote-ref-5)
6. Israel Bar Association, Official Monitoring Report, Saharonim Facility, December 31, 2013, pages 7-8. Accessible in Hebrew at: <http://bit.ly/MTIqMn> [↑](#footnote-ref-6)
7. Article 2(H) of 2010 Prison Ordinance (Detention Conditions) and Article 3(E)(2) of the 1977 Penal Code (Arrest Enforcement Authority) (Detention Condition) [↑](#footnote-ref-7)
8. See footnote 3. [↑](#footnote-ref-8)
9. Ibid., page 20 of the report. [↑](#footnote-ref-9)
10. Appendices to the National Outline Plan no. 46 to the Holot Facility: “Detailed Program”, p. 7 table number 2 and the “Social Appendix”, page 89 (Hebrew). [↑](#footnote-ref-10)
11. Population and Immigration Authority, statistics on foreigners in Israel: 2017 summary, January 2018: [↑](#footnote-ref-11)
12. Population and Immigration Authority, press release: shutdown of Holot detention facility, March 12, 2018. [↑](#footnote-ref-12)
13. Procedure for Deportation to a Third Country 10.9.0005, second edition, January 30, 2018. [↑](#footnote-ref-13)
14. Einat Fishbain, The 8000 refugees who filed for asylum are also under threat of deportation, Hottest Place in Hell, February 28, 2018: <https://www.ha-makom.co.il/post/einat-yossi-edelstein> [↑](#footnote-ref-14)
15. UNHCR, UNHCR appeals Israel Over Forced Relocations Policy, January 9, 2018: <https://reliefweb.int/report/israel/unhcr-appeals-israel-over-forced-relocations-policy> [↑](#footnote-ref-15)
16. Six testimonies in a report by Ilan Lior, asylum seekers deported from Israel to Rwanda warn those remaining: 'don't come here', February 2, 2018: <https://www.haaretz.com/israel-news/asylum-seekers-who-left-israel-for-rwanda-warn-those-remaining-don-t-1.5785996> , 15 testimonies in a report by Uzi Dan, Haaretz correspondent in Rwanda reveals the Israeli lie in the deportation of asylum seekers, March 1, 2018: <https://www.haaretz.co.il/news/education/.premium-MAGAZINE-1.5865609> [↑](#footnote-ref-16)
17. Population and Immigration Authority, press release: shutdown of Holot detention facility, March 12, 2018. [↑](#footnote-ref-17)