

Denial of Refuge

THE PLIGHT OF ERITREAN AND SUDANESE ASYLUM SEEKERS IN ISRAEL



April 2018

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SUMMARY

In February and March 2018, a Refugees International (RI) team¹ traveled to Israel to assess the situation for Eritrean and Sudanese asylum seekers, in light of the stated intention of Israeli officials to move forward with either removal from Israel or indefinite detention of large numbers of these two populations. RI was particularly concerned about this issue due to the denial of effective access to asylum and serious risks faced by tens of thousands of people.

Shortly after our mission, in a surprising development on April 2, 2018, Israeli Prime Minister Benjamin Netanyahu and other senior Israeli officials announced what the prime minister termed a “landmark agreement” to resolve the status of nearly 35,000 Eritrean and Sudanese asylum seekers currently living in Israel.

The agreement, a Framework of Common Understanding with the UN High Commissioner for Refugees (UNHCR), envisioned the departure from Israel over five years of just under half the asylum seekers to third countries under established migration, immigration, and refugee resettlement programs, and a regularized status for the others who would remain in Israel. In defending the arrangement to the Israeli public, the prime minister and other Israeli government officials made a number of reasoned and reasonable arguments: that the Israeli government’s third-country relocation option involving coerced removal to Rwanda and Uganda was not workable; that a large number of African asylum seekers would have inevitably remained in Israel with or without an agreement with UNCHR; and that the agreement and the ability to avoid the prospect of detention for possibly thousands of asylum seekers would free up resources for social and economic development of communities affected by arrivals of asylum seekers.

This was a potentially honorable approach to address the policy challenge resulting from significant migration of asylum seekers from Eritrea and Sudan, countries with brutal dictatorships that have perpetrated gross and systematic violations of human rights. That migration began in large numbers after 2005 and came to a virtual end in 2013, with the completion by Israel of a reinforced fence along the border with Egypt. Yet as of today, nearly 35,000 Eritrean and Sudanese asylum seekers remain in Israel, along with some 5,000 to 7,000 of their children who were born in Israel.

The agreement also would have represented a welcome departure from a policy of the Israeli government designed to drive this population out of Israel without basic safeguards for their fundamental rights. The elements of the policy have included the incarceration of asylum seekers regardless of whether they have credible claims to protection; public declarations by senior Israeli officials that the asylum seekers are “infiltrators” and that the vast majority of asylum claims are meritless; efforts by detention center officials to press asylum seekers to leave the country; a lack of meaningful access to asylum; and unreasonable burdens on the daily lives of asylum seekers, including confiscation of a high percentage of wages pending departure from the country. The policy also included arrangements for coerced relocation of asylum seekers to Rwanda and Uganda.

Unfortunately, the good news of April 2 on a new way forward was short-lived.

1. Mission participants included Refugees International (RI) President Eric Schwartz, Senior Policy Advisor Ann Hollingsworth, RI Board Member Jan Weil, and RI consultant Lisa Richlen.

On April 3, in a stunning reversal, Prime Minister Netanyahu announced he would cancel the agreement. The announcement came after strong expressions of opposition to the agreement among many of the prime minister's political supporters and allies. Although UNHCR urged the prime minister and the government to reconsider this decision, the agreement remains cancelled as of this writing.

In a further twist, the Israeli government announced on April 24 that it would refrain from deporting Sudanese and Eritrean asylum seekers to third countries. The announcement came in response to a petition filed with Israel's High Court by human rights groups to block the government from carrying out a plan to deport these asylum seekers. However, Refugees International remains deeply concerned by reports that Prime Minister Netanyahu now intends to reopen the Holot detention center, established several years ago to detain asylum seekers and pressure them to leave Israel. We are concerned that members of the prime minister's coalition will put forward new legislation designed to circumvent court restrictions on abuses against asylum seekers, such as indefinite detention and deportation to countries where their lives or freedom would be at risk.

RECOMMENDATIONS

The Government of Israel should:

- Recommit to support for the Framework of Common Understanding with UNHCR on a resolution of the situation involving Eritrean and Sudanese asylum seekers, which would represent a humane outcome—and one which the Government of Israel has a robust capacity to implement.
- Pending renewed government support for the Framework of Common Understanding, provide Eritrean and Sudanese asylum seekers with temporary residence visas that will accord them a greater sense of security than conditional release visas. Make clear that such asylum seekers will not be subject to detention.
- Immediately commit to establishing a meaningful asylum process that meets internationally recognized standards. In particular, cooperate with UNHCR in the establishment of an independent, expert panel to evaluate the current system. In the meantime, and in light of the denial of effective access to asylum and extremely troubling reports of coerced relocations under unacceptable conditions, refrain from any coerced relocation of Eritreans or Sudanese to third countries.
- Immediately end a range of measures designed to drive asylum seekers from Israel, including, among other measures, public declarations by senior officials that the vast majority of asylum claims are meritless, efforts by officials to press asylum seekers to leave the country, continued reference to asylum seekers as “infiltrators,” and confiscation of a high percentage of wages pending departure from the country.
- Oppose any legislative measures in the Knesset designed to circumvent court restrictions on abuses against asylum seekers.
- Ensure that—beyond Eritreans and Sudanese—other (and smaller) populations of asylum seekers who may have entered the country through Sinai are, at a minimum, also accorded basic protections as outlined in these recommendations.

The Governments of Rwanda and Uganda and other third countries should:

- Commit to ensuring that any agreements reached with the Government of Israel are public, contain strong safeguards relating to voluntariness and the rights and well-being of the asylum seekers, and include independent monitoring and the participation of UNHCR in the development of all procedures.

Governments of Canada, the United States, and Europe, which have all already received some asylum seekers from Israel, should:

- Strongly urge the Government of Israel to recommit to the Framework of Common Understanding with UNHCR.
- Make clear their collective willingness to receive over the period of five years a substantial number of Eritrean and Sudanese asylum seekers now in Israel, so as to facilitate implementation of the Framework of Common Understanding. Condition such willingness on a cessation of deportation, detention, or confiscation of salaries of asylum seekers and on the integration with adequate status of the remaining asylum seekers in Israel.

UNHCR (and UNHCR's donors) should:

- Provide additional funding for NGOs that are directly supporting African asylum seekers through community building activities, psychosocial support, livelihood and language training, and provision of information and legal assistance to the asylum seeker community. Place particular emphasis on programs aimed at women and children.

BACKGROUND: THE FLIGHT OF ERITREAN AND SUDANESE ASYLUM SEEKERS TO ISRAEL

Significant migration of African asylum seekers to Israel through Sinai began after 2005, with the large majority coming from Eritrea and Sudan.² Asylum seekers from those two countries numbered more than 50,000 by 2012. The migration stemmed from a number of causes, including Israel's proximity to Eritrea and Sudan and the perpetration of grave and systematic abuses of human rights in both countries.

Eritrea has long had a repressive government led, since independence in 1993, by Isaias Afwerki, a dictator whose government has been responsible for torture, disappearances, extrajudicial executions, forced labor, and sexual violence. At the beginning of the exodus of Eritreans to Israel, the U.S. State Department's Country Report on

Human Rights Practices for 2006 noted "unlawful killings by security forces; torture and beatings of prisoners, some resulting in death; harsh and life threatening prison conditions; arbitrary arrest and detention;...government roundups of young men and women for national service; arrest, incarceration, and torture of family members of national service evaders, some of whom reportedly died of unknown causes while in detention; severe restrictions on basic civil liberties."³

In 2016, a final report of the UN Commission of Inquiry (COI) on Human Rights in Eritrea commented further on the government's system of conscription. Reviewing practices over decades, the COI concluded that conscription in Eritrea constitutes enslavement. In particular, the combination of factors associated with conscription—arbitrary and indefinite detention, forced labor, inhumane conditions, detention, torture, and killings for expressions of political opposition—demonstrate clearly that this has been a tool of political control.⁴

2. Note on terminology: We use the term "asylum seekers" throughout, simply because this is the most accurate characterization of the population. To be sure, thousands of Eritreans and Sudanese in Israel have not made formal application for asylum. But given the bars to effective access to asylum as described in this report, we believe our terminology is appropriate.

3. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2006 Country Reports on Human Rights Practices: Eritrea, 2006, <https://www.state.gov/j/drl/rls/hrrpt/2006/78733.htm>.

4. United Nations Human Rights Council, Report of the Commission of Inquiry on Human Rights in Eritrea, May 9, 2016, <http://www.refworld.org/docid/575920394.html>.

Sudan is also a country where human rights are not respected and where, during the period of the migration of Sudanese to Israel, particularly harsh violations were committed in the Darfur region, as well as in other parts of the country. In Darfur, these included rape, extra-judicial killings, and torture by Sudanese forces and militias to which they were allied⁵—crimes that had caused the U.S. government to declare in 2004 that “genocide had been committed.”⁶ Additionally, during this period, there was ongoing political repression in other parts of Sudan, as well as instability and abuses of human rights in the southern part of the country—which, after independence in 2011, became South Sudan.⁷

Testimonies from Eritreans and Sudanese interviewed by RI on human rights abuses and persecution as reasons for flight, and on conditions during transit, mirrored reports received by many credible human rights organizations and lawyers involved in asylum proceedings. Over the past decade or so, these have included arbitrary arrest, mistreatment while in detention, and well-founded fear of continued abuses. Interviewees also described to RI arduous transit experiences. In the case of Eritreans, the route was through Sudan, in some cases transiting first through Ethiopia, and then through Egypt. With respect to all countries through which asylum seekers transited, interviewees highlighted grave risks—of being warehoused, abused, tortured, detained, or even returned—all of which played a role in their onward movement to Israel.

African asylum seekers interviewed by RI also described the challenging and often harrowing experience of transit from Egypt to Israel, with the involvement of smugglers. Beyond demanding initial payments to secure passage, smugglers would take the asylum seekers into Sinai and

then force them to contact their relatives by phone and obtain ransom payments. Credible organizations have reported how phone calls were made while the asylum seeker was being tortured.⁸ And the trauma did not end when asylum seekers were left at a point near the border between Israel and Egypt: as they raced toward the border with Israel, they risked death by gunfire at the hands of Egyptian border guards.



Children of asylum seekers at a community center in Jerusalem

5. See, e.g., Human Rights Watch. World Report 2007—Sudan. January 11, 2007, <http://www.refworld.org/docid/45aca2a72.html>.

6. George W. Bush, “Statements on the Situation in Sudan, September 9, 2004.” In *Public Papers of the President of the United States: George W. Bush, 2004, Book II—July 1 to September 30, 2004*, Washington, D.C.: Government Printing Office, 2007, <https://www.gpo.gov/fdsys/pkg/WCPD-2004-09-13/pdf/WCPD-2004-09-13-Pg1909.pdf>

7. Human Rights Watch. Darfur in the Shadows: The Sudanese Government’s Ongoing Attacks on Civilians and Human Rights. June 5, 2011, <https://www.hrw.org/report/2011/06/05/darfur-shadows/sudanese-governments-ongoing-attacks-civilians-and-human-rights>.

8. Extortion, imprisonment, sexual violence, and other horrendous human rights abuses have been well-documented. See, e.g., Human Rights Watch. Egypt: End Traffickers’ Abuse of Migrants. December 9, 2010, <https://www.hrw.org/news/2010/12/09/egypt-end-traffickers-abuse-migrants>; Dina Kraft, “Bedouin Smugglers Abuse Africans Held for Ransom, Israel Group Says,” *New York Times*, February 15, 2011, <https://www.nytimes.com/2011/02/16/world/16bedouin.html>; and Maayan Lubell, “African Migrants Report Abuse on Way to Israel,” Reuters, January 13, 2011, <https://af.reuters.com/article/topNews/idAFJ0E70CoA020110113?sp=true>.

TESTIMONIES: THE FLIGHT TO ISRAEL

Daniel,⁹ an Eritrean interviewed by RI who had been imprisoned in Eritrea, was 24 at the time of our interview. But he was only 16 when he fled Eritrea for Ethiopia and then Sudan. He reported that Bedouin smugglers waited for Eritreans in the border crossing area between Sudan and Egypt. Daniel was kidnapped and tied up with others, and they were told they would have to pay to get to Israel. Though he had not intended to go to Israel (he had planned to remain in Sudan where an uncle lived), Daniel was threatened with death if he refused. He reported that he was subsequently sold to other smugglers in Sinai and again extorted. To raise the necessary funds, he called his family in Eritrea and people in other countries. He reported to RI that his family had to sell everything they owned to raise the money.

Born in 1961, Abraham, an Eritrean asylum seeker, left military service in 2011 after serving for about 17 years, and fled from Eritrea, transiting through Ethiopia, Sudan, and Egypt. Abraham told RI that after arriving in Sudan, “I was kidnapped and taken to Sinai. I was beaten and tortured by electricity. My family paid \$10,000 so I could be released from Sinai. I arrived in Israel in 2012 and was dropped off in Tel Aviv.”

Ruta, a young woman also from Eritrea, told of fleeing Eritrea with her husband, who had returned from the military but had been imprisoned for “asking too many questions.” They left the country after his release and arrived in an Ethiopian refugee camp. She reported that:

Every day, the authorities there gave us a very small ration of oil and flour, but it wasn't really enough to survive. There was no medical care. There were mosquitos, and people were bitten all over...We tried to go to Sudan, but eight times we were captured and returned to Ethiopia. The Ethiopian soldiers shot at us at the border. Criminals took all of our things, including my wedding ring. Eventually we were able to enter Sudan, but we didn't feel safe because of the cooperation between the Governments of Sudan and Eritrea...We went to Egypt and were in Sinai for a week before a friend helped us come to Israel at the end of 2007.

After either scaling or going under border fences, the asylum seekers would typically encounter the Israeli military, be held for short periods of time in detention, and then be provided a bus ticket for transit to Tel Aviv. They were granted a status of conditional release under article 2(A)(5) of the Entry into Israel Law, with a requirement of regularly reporting to the Ministry of the Interior for renewal.

These African asylum seekers have had a precarious existence in Tel Aviv and other parts of Israel. Through 2012, they did not have access to the asylum system. The government's position was that they were all being

provided with group protection from return. However, their conditional release status meant few legal protections or social or economic benefits. They were also without formal permission to work. However, in response to a legal petition brought before Israel's High Court of Justice, the Israeli government made clear that those who employed individuals with such conditional release visas would not be sanctioned.

As mentioned, by 2012, there were more than 50,000 Eritrean and Sudanese asylum seekers in Israel, and the issue had become the subject of significant domestic debate in the country.

9. RI uses pseudonyms for asylum seekers throughout this report to protect their privacy and security.

On the other hand, with the construction of a reinforced fence of some 150 miles along the Sinai border between Israel and Egypt from 2010 to 2013,¹⁰ the number of arrivals in Israel has plummeted and the border is now effectively sealed. As of the end of 2017, some 27,000 Eritrean and 7,700 Sudanese asylum seekers remained in Israel.¹¹ As is described below, reductions in the numbers have been due primarily to returns to countries of origin or relocation to third countries under circumstances that raise grave concerns about coercion and basic human rights protections, as well as voluntary migration through resettlement, sponsorship, and family unification programs.

THE PLAN TO DEPORT AFRICAN ASYLUM SEEKERS WITHOUT PROTECTION OF BASIC RIGHTS: EVOLUTION OF LEGAL, POLICY, AND ADMINISTRATIVE ARRANGEMENTS THROUGH 2017

Background and events until 2013

Several laws govern the entry of foreigners into Israel, including the Law of Return (relevant to Jews and those of Jewish ancestry), the Entry into Israel Law, and Israel's Nationality Law. Israel is also a party to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, having acceded to them in 1954 and 1968, respectively. In the years prior to 2001, there were a

variety of asylum cases in which officials, on an ad hoc basis, considered small numbers of refugee applicants, for example, from Albania, Vietnam, and Iraq. In 2001, an interministerial body was established to consider recommendations for asylum from UNHCR. By 2009, the Israel's Ministry of the Interior had taken on responsibility for full examination of claims.¹²

“I was kidnapped and taken to Sinai. I was beaten and tortured by electricity. My family paid \$10,000 so I could be released from Sinai. I arrived in Israel in 2012 and was dropped off in Tel Aviv.”

— Abraham, Eritrean asylum seeker

However, in the case of Eritrean and Sudanese applicants, the Government of Israel initially made clear that it had no intention to consider the option of asylum, and, as mentioned, that option was not available to them (even in theory) until 2013.

As also mentioned, Israeli government officials made the case that the conditional release visa provided to Eritrean and Sudanese asylum seekers ensured protection from forced return to countries of origin. But the government's evolving attitude and perspectives were more clearly revealed by passage, in 2012, of legislation that stigmatized and punished African asylum seekers.

10. Most of the construction was completed in 2013, but additional modifications have been made subsequently. See Batsheva Sobelman, “Israel Completes Most of Egypt Border Fence,” *Los Angeles Times*, January 2, 2013, <http://articles.latimes.com/2013/jan/02/world/la-fg-israel-africa-immigration-20130103>; and Anna Ahronheim, “Israel Completes Heightened Egypt Border Fence,” *Jerusalem Post*, January 18, 2017, <http://www.jpost.com/Israel-News/Israel-completes-heightened-Egypt-border-fence-478840>.

11. UNHCR Press Release, “UNHCR appeals to Israel over forced relocations policy,” January 9, 2018, <http://www.unhcr.org/news/briefing/2018/1/5a548e064/unhcr-appeals-israel-forced-relocations-policy.html>. There are also other populations of African asylum seekers in Israel, but in much smaller numbers.

12. Discussion of this history and procedures, see Anat Ben-Dor and Rami Adut, *Israel—A Safe Haven? Problems in the Treatment Offered by the State of Israel to Refugees and Asylum Seekers*. Physicians for Human Rights, September 2003 (Buchmann Faculty of Law Public Interest Law Resource Center), https://en-law.tau.ac.il/sites/law-english.tau.ac.il/files/media_server/Law/Israel%20a%20Safe%20Haven%2C%20report%20and%20opposition%20paper%2C%202003.pdf; and Hotline for Refugees and Migrants. Refugees “Some Statistics,” 2015, <https://hotline.org.il/en/refugees-and-asylum-seekers-en/%E2%80%8Fisraels-asylum-system/>. Note that the very consequential issue of Israeli policy toward and treatment of Palestinian refugees is outside the scope of this study.



The region through which African migrants have transited from Sudan and Eritrea, through Egypt to Israel. Source: Map data ©2018 Google, ORION-ME

In that year, the government amended a 1954 Law for the Prevention of Infiltration, to impose mandatory and long-term detention of asylum seekers who entered Israel through the Sinai border.¹³ A contemporary commentary about the legislation, from the Israel Democracy Institute, reflected an obvious and deep concern about the legislation’s portrayal of this population as a threat to Israeli security:

The Prevention of Infiltration Act was originally enacted in 1954 to address the phenomenon of Palestinian fedayeen, armed militia members who attempted to infiltrate to attack Israeli targets, which was considered to be a security threat at the time; the symbolic significance of applying this particular ‘securitization discourse’ to all asylum seekers should not be underestimated.¹⁴

Israeli officials have gone far beyond security discourse in describing the purported threat and have effectively demonized the African asylum seeker population.

In 2012, then-Interior Minister Eli Yishai suggested that many of the migrants were criminals infected with the HIV virus, saying that southern Tel Aviv (where many of the migrants had congregated) had become the country’s “garbage can” and that migrants should be imprisoned “without exception.”¹⁵ He later commented that “the infiltrator threat is just as severe as the Iranian threat” and added, “Until I can deport them, I’ll lock them up to make their lives miserable.”¹⁶ While most Israeli politicians have not used language as incendiary as that used by Yishai,

13. The law applies to border crossings not recognized by the Israeli Ministry of the Interior. This brief description of the evolution of amendments to the Prevention of Infiltration Act due to court challenges is drawn from a variety of sources, including a chronology contained in an unpublished paper by Israeli scholar Maayan Ravid, entitled “Crossing Borders, from Exceptional to Criminal” (2015), and by Israeli interlocutors and contemporary news accounts, pp. 34-36, and by Israeli interlocutors and contemporary news accounts.

14. Reuven Ziegler, “The New Amendment to the ‘Prevention of Infiltration’ Act: Defining Asylum Seekers as Criminals,” Israel Democracy Institute, January 16, 2012, <https://en.idi.org.il/articles/3944>.

15. Harriet Sherwood, “Israeli Minister Inflames Racial Tensions with Attack on ‘Infiltrators,’” *The Guardian*, May 31, 2012, <https://www.theguardian.com/world/2012/may/31/israeli-minister-racial-tensions-infiltrators>.

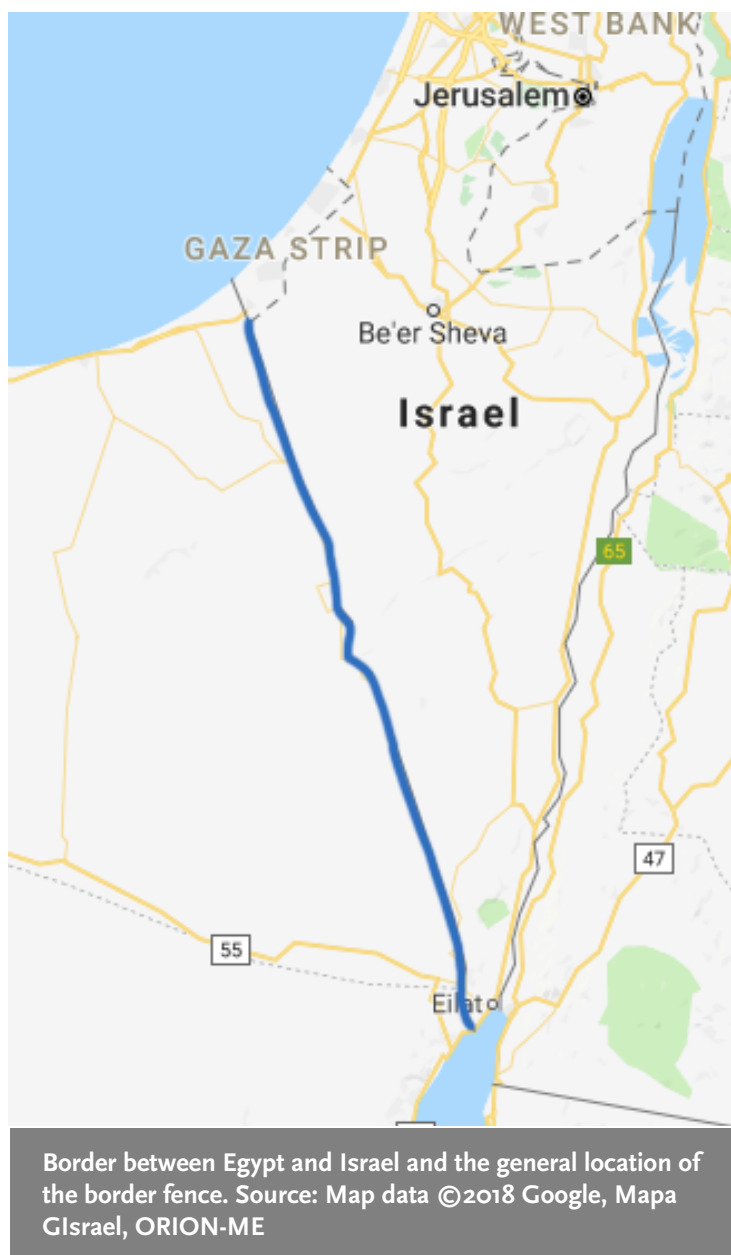
16. Ibid.

the narrative of “illegal infiltration” has been pervasive. In 2012, Prime Minister Netanyahu referred to “illegal infiltrators flooding the country.”¹⁷ In a September 2017 transcript of remarks as released by the Israeli Foreign Ministry, Prime Minister Netanyahu referred to “illegal” infiltrators no less than five times.¹⁸

“We tried to go to Sudan, but eight times we were captured and returned to Ethiopia. The Ethiopian soldiers shot at us at the border. Criminals took all of our things, including my wedding ring.”

— *Ruta, Eritrean asylum seeker*

The 2012 amendment to the Prevention of Infiltration Act provided for a minimum of three years detention—with the possibility in some cases of it continuing indefinitely. The law was challenged in court. Over several years, the restrictions evolved as a result of court rulings and subsequently revised legislation. By the end of 2016, an African asylum seeker could be summoned to confinement of 12 months at the Holot detention facility in the Negev Desert. At Holot, inmates could “check out” of the facility during the day. Asylum seekers could also be subjected to three months of detention in the nearby and Saharonim prison (for example, if they were caught without a valid visa or if they violated rules while at the Holot facility). Prisoners in Saharonim are not permitted to check out of the facility during the day.



17. Matthew Kay and Jasper Kain, “African Migrants Speak Out About Life in Israel’s Detention Centers,” *The Guardian*, December 19, 2014, <https://www.theguardian.com/world/2014/dec/19/-sp-african-migrants-speak-out-about-life-in-israel-detention-centres-holot>.

18. Israel Ministry of Foreign Affairs, Communicated by the Prime Minister’s Media Adviser, “PM Netanyahu’s Remarks at the Start of the Weekly Cabinet Meeting,” September 3, 2017, <http://mfa.gov.il/MFA/PressRoom/2017/Pages/PM-Netanyahu%27s-remarks-at-the-start-of-the-weekly-Cabinet-meeting-3-September-2017.aspx>.

But the significance of the legislation was not only the length of detention. It was also critically important because it represented an effort to coerce asylum seekers to leave Israel, through threats and deprivation of freedom through detention. (The government also offered a \$3,500 payment to those who agreed to leave Israel.) Self-deportation could be to countries of origin¹⁹ or other countries that might accept an asylum seeker—in particular, Rwanda or Uganda—with which the Government of Israel reportedly reached agreements on relocation.

Israeli officials have gone far beyond security discourse in describing the purported threat and have effectively demonized the African asylum seeker population.

Moving to forced relocation

In March 2015, the effort to force African asylum seekers from Israel was stepped up again, when Minister of the Interior Gilad Erdan announced that Israel would detain indefinitely those who refused to be relocated.²⁰ This was also promptly challenged in court, with representatives of the asylum seekers questioning, inter alia, the safeguards for those being sent to the unnamed third countries, widely known to be Rwanda and Uganda, and challenging the right of the state to detain indefinitely asylum seekers refusing relocation. In its decision,²¹ the Supreme Court of Israel did not ultimately reject the government's relocation scheme but denied the government the ability to

detain beyond 60 days asylum seekers who refused relocation. The court based its judgment on the fact that the agreement with Rwanda provided for voluntary relocation and that subjecting an asylum seeker to indefinite detention for declining voluntary relocation was incompatible with voluntariness.

The government, in turn, subsequently contended that it had reached an arrangement with a third country (revealed as Rwanda) that permitted such involuntary returns. In early 2018, the Israeli government began issuing departure orders and threatened to detain those not prepared to subject themselves to relocation, with the stated intention of doing so indefinitely as long as they remained unwilling to be relocated to third countries. The government further indicated that any asylum claims submitted after January 1, 2018, would not be considered in Israel but rather could be considered in a third country. Finally, the government indicated that women, minors, parents of minors, and those individuals recognized by Israeli police as victims of trafficking in Israel would be exempted from these measures.²²

THE GRIM “SUCCESS” OF ISRAELI POLICIES TO DRIVE OUT ASYLUM SEEKERS: KEY ELEMENTS

Before considering subsequent developments, it is worth noting that Israeli policies were, by the end of 2017, already achieving the government's objectives in substantial measure. From 2014 through 2017, more than 15,000

19. See Hotline for Refugees and Migrants, “‘Voluntary’ Departure,” 2015, <https://hotline.org.il/en/refugees-and-asylum-seekers-en/voluntary-departure/>. Hotline reports that “human rights organizations have been unable to contact Eritreans who’ve returned to their homeland and their fate is unknown,” but does report that Sudanese who returned to Sudan have faced abuses.

20. Mairav Zonszein, “Israel to Deport Eritrean and Sudanese Asylum Seekers to Third Countries,” *The Guardian*, March 31, 2015, <https://www.theguardian.com/world/2015/mar/31/israel-to-deport-eritrean-and-sudanese-asylum-seekers-to-third-countries>.

21. The opinion is Administrative Appeal 8101/15, before the Supreme Court of Israel, sitting at the Court of Appeals for Administrative Affairs.

22. Much of this is spelled out in “Procedure for Relocation to Third Countries,” Procedure No. 10.9.0005, January 30, 2018. There are others who are effectively exempted, including about 1,000 Darfuris who have been granted temporary status in actions by both the prior Olmert government and the current government.



Asylum seeker outside of the Holot detention center

Eritrean and Sudanese asylum seekers are believed to have departed Israel, including some 4,000 who went to Rwanda or Uganda.

In sum, the pressure on African asylum seekers to leave Israel was reflected in a combination of several elements, all of which sent the strongest of signals that Israel was not a place of meaningful refuge: 1) the incarceration of asylum seekers regardless of whether they have credible claims to protection; 2) public declarations by senior officials that the vast majority of asylum claims are meritless; 3) efforts by officials in detention centers to strongly encourage asylum seekers to choose self-deportation;²³ 4) a lack of effective access to asylum; and 5) unreasonable burdens on the daily lives of asylum seekers.

We deal below in detail with the final two of these elements: lack of effective access to asylum and unreasonable burdens on daily lives of asylum seekers.

In early 2018, the Israeli government began issuing departure orders and threatened to detain those not prepared to subject themselves to relocation, with the stated intention of doing so indefinitely as long as they remained unwilling to be relocated to third countries.

23. This is discussed below in “Unreasonable burdens on the daily lives of asylum seekers.”

The lack of effective access to asylum

Israeli officials will contend that asylum is an option for asylum seekers and that they do not deport asylum seekers whose claims are pending. However, the claim that asylum is an option for asylum seekers who have fled unspeakable atrocities in their countries of origin is not credible. The lack of effective access was most evident prior to 2013, when asylum for Eritreans and Sudanese was simply not an available option, even in theory. Thus, while their conditional release status in Israel enabled them to avoid refoulement (or the forced return to a country where their life or freedom would be threatened), their status in Israel was very precarious, without access to many essential services, and subject to change without prior notice or effective review.

The Israeli government did indeed begin to accept applications in 2013,²⁴ but even at that point, there were several disincentives, according to asylum seekers and experts interviewed by RI (and according to many published accounts). First, information on the possibility of applying for asylum was not well-publicized. Second, African asylum seekers who had registered with UNHCR may have mistakenly thought that they had already applied for asylum, and, again, there were no serious and significant efforts to provide information to the population. Third, a drumbeat of government rhetoric denying that the asylum seekers were anything other than infiltrators looking for work almost certainly left many potential applicants doubting the benefits of any such application. And fourth, motivation to apply was further reduced by lack of physical access to the relevant offices due to an under-resourced system—and the fact that applying would often necessitate missing day after day of work to wait in a long line without any guarantee of being able to make application.

Finally, and most importantly, the asylum process in implementation does not represent a serious effort to identify protection needs.

The asylum process in implementation does not represent a serious effort to identify protection needs.

The numbers speak for themselves.

In Europe, for example, between 2008 and 2016, asylum recognition rates for Eritreans and Sudanese, respectively, ranged annually from about 70 percent to 90 percent for Eritreans and from about 30 percent to 60 percent for Sudanese.²⁵ These figures include claimants granted subsidiary protection and humanitarian protections, and who therefore may not have met the definition of a refugee as defined by the Refugee Convention and Protocol. Nonetheless, the majority of successful claimants in Europe—tens of thousands of Eritreans and thousands of Sudanese—received protection based on the Refugee Convention and Protocol.

In contrast, in Israel, the asylum recognition rate, remarkably, is less—and almost certainly far less—than one percent. As a statistical matter, there is virtually no chance that an asylum seeker from Eritrea or Sudan will obtain a positive determination. According to the Israeli organization Hotline for Refugees and Migrants, some 15,000 Africans in Israel had applied for asylum as of March 2018 and about 7,000 cases had been rejected or otherwise closed. Of those cases, it was believed that 11 individuals had been granted asylum.

Given the circumstances that confronted Eritreans and Sudanese fleeing their countries of origin, this simply

24. Hotline, “Some Statistics” (see footnote 13). Human Rights Watch had reported that a limited number of applications were accepted in 2012. See Human Rights Watch. ‘Make Their Lives Miserable’: Israel’s Coercion of Eritrean and Sudanese Asylum Seekers to Leave Israel. September 2014, https://www.hrw.org/sites/default/files/reports/israel0914_ForUpload_1.pdf.

25. See Migration Policy Institute. Asylum Recognition Rates in the EU/EFTA by Country, 2008-2016. 2016, <https://www.migrationpolicy.org/programs/data-hub/charts/asylum-recognition-rates-euefta-country-2008-2016>.

cannot represent a serious effort to determine genuine protection needs in accordance with internationally recognized standards.²⁶

As a statistical matter, there is virtually no chance whatsoever that an asylum seeker from Eritrea or Sudan will obtain a positive determination.



RI interviewing asylum seekers outside of the Holot detention center

Unreasonable burdens on the daily lives of asylum seekers

Refugees International is also concerned that the community of African asylum seekers in Israel is deeply dispirited and demoralized as a result of a range of unreasonable burdens. As a refugee rights and protection organization, RI strongly believes these burdens should not be borne by asylum seekers in Israel or anywhere else in the world.

Refugees International is also concerned that the community of African asylum seekers in Israel is deeply dispirited and demoralized as a result of a range of unreasonable burdens. As a refugee rights and protection organization, RI strongly believes these burdens should not be borne by asylum seekers in Israel or anywhere else in the world.

Pervasive official hostility: As mentioned, Israeli officials have legislatively and rhetorically labelled the entire community of African asylum seekers as infiltrators, accusing them of damaging communities and lacking credible claims to asylum. This official hostility directed at an entire community inevitably enables prejudice and bigotry in the broader population, and has only increased the anxiety of asylum seekers who, in many cases, are already dealing with post-traumatic stress related to the conditions of their departures and transit from their countries of origin. We are also concerned that this hostility toward the idea that African asylum seekers could have bona fide claims has been reflected in individual interactions between Israeli officials and the asylum seekers.

26. For a more detailed discussion of the practical denial of access to asylum, see UNHCR, “UNHCR Position on the Status of Eritrean and Sudanese Nationals Defined as ‘Infiltrators’ by Israel,” November 2017, <http://www.refworld.org/pdfid/5a5889584.pdf>

For example, Bakhit, a 33-year-old Sudanese man from Darfur who reported having suffered arrest, torture, and restrictions on his movement in Sudan, described to RI interactions with Israeli officials while he was in an Israeli prison:

I heard about applying for asylum from friends... When I was put in prison in Israel...there was an interview. ...[t]he prison authorities told me to say I was coming here to work otherwise they threatened to not release me. There was pressure to claim that you were a work migrant... Since I arrived in 2012, I don't have any status, just a two-month visa. I haven't had an asylum interview, and no one has spoken to me or notified me of anything. No one is getting refugee status.

Israeli officials have repeatedly tarred the entire community of African asylum seekers with the brush of “infiltration,” accusing them of damaging communities and lacking credible claims to asylum.

Pervasive uncertainty: To be sure, asylum seekers almost anywhere in the world live in an environment of uncertainty. But in Israel, that uncertainty is compounded by the absence of predictable processes surrounding temporary protection and asylum.²⁷ Critical policies and procedures implicating asylum seekers—such as permission to work, conditional visa renewal processes, exclusion of certain categories of asylum seekers from detention in Holot (including Dafuris and youth who had been educated in certain schools in Israel), waiting periods for asylum adjudications, time limitations surrounding asylum applications, etc.—have not been the subject of clearly explained, articulated, and publicized rule-making efforts. Rather, they more often have been implemented in ad hoc manners

subject to ad hoc changes. Further, those procedures and processes have not been clearly explained to those whose lives are so dramatically affected. Namir, a Sudanese man interviewed by RI, conveyed this sense of uncertainty powerfully:

I have to renew my visa every two months, and I have to renew again in one week. It doesn't matter if it is a two-month visa or a six-month visa. I am still not getting the protection I deserve. I applied for asylum a year ago and am still waiting for an interview ...I don't know what will happen. I'm here for six years. The Sudanese government has my name. I can't go back. I don't like not knowing what will happen tomorrow. We are all human. I'm not going to Rwanda, I'm staying in Israel. I'll go to prison here. Israel has a humanitarian responsibility for us. We are refugees. We are escaping from war. If Israel can't take us, the UN should do something. The UN should do what Israel isn't.

“...[t]he prison authorities told me to say I was coming here to work otherwise they threatened to not release me. There was pressure to claim that you were a work migrant...”

— Bakhit, Sudanese asylum seeker

This uncertainty extends beyond adults to children. Ruta, an Eritrean mother, commented on effects of the stepped up Israeli effort at deportation:

I am the mother of three children. My son is nine and a half. He is asking all sorts of questions that I can't answer. He is also acting out and maybe it is because of the situation. If I told him [what is actually happening], he would be

27. Loveday Morris, “The Future of Israel’s ‘Dreamers,’” *Washington Post*, March 5, 2018, https://www.washingtonpost.com/news/world/wp/2018/03/05/feature/african-migrants-facing-deportation-in-israel/?utm_term=.ca81dbbf51.

afraid. If I don't say anything, he will hear it from others...People are really worried. You can feel the change in the community. People are scared. They are constantly calling to see if there is news.

“I am still not getting the protection I deserve. I applied for asylum a year ago and am still waiting for an interview [...] I don't know what will happen [...] I can't go back. I don't like not knowing what will happen tomorrow. We are all human.”

— *Namir, Sudanese asylum seeker*

The deposit legislation: The African asylum seeker community has been particularly affected by deposit legislation which came into effect in May 2017. This requires that 20 percent salary deductions be made for employees who entered Israel through Sinai, on top of a minimum income tax of 10 percent.²⁸ This deduction—to be returned to the asylum seeker when he is departing Israel—is confiscatory and has imposed serious burdens on the families of asylum seekers. The minimum wage in Israel is the equivalent of about US\$8.00 per hour, and minimum taxes and the deposit law reduce the effective salary dramatically within a population that is largely poor and struggling.

Women and children: At least for the time being, women and children have been exempted from some of the government measures pressing for departure, but the overall approach of demonization of asylum seekers and sustaining grave uncertainty about status has had a profound impact on women and children. In interviews with local NGOs, staff from community centers and a

social worker supporting the Eritrean community, as well as with Eritrean women themselves, it was deeply troubling to hear of the layers of vulnerability that women and their families now face. They told RI that men who were fleeing Israel in fear of forcible deportation or imprisonment were leaving female family members who relied on their support, particularly single mothers, in a dire financial circumstance. Women who are working are often in the cleaning sector. With the deposit measure in place, which takes an additional 20 percent of their meager income, it was difficult for these women to survive financially, driving them toward negative coping strategies.

RI was told that due to economic distress, families are cutting out of their budgets health insurance, food, and clothing. A social worker in Jerusalem described to RI a tense community where “social structures are falling apart” and problems of poverty and isolation are making lives for women very difficult.

It was deeply troubling to hear of the layers of vulnerability that women and their children now face.

NGO staff described a population of women dealing with the aftermath of significant trauma as many women survived trafficking, torture, or rape either on the journey to Israel or in their country of origin. One Eritrean woman described feeling “forgotten” and said that women felt “broken down.” Community center staff told RI there has been a recent increase in incidents of domestic violence.

The psychosocial needs of this population cannot be overstated. Eritrean women described to RI feeling scared and anxious, uncertain about their own status, as well as the status of their friends and family, particularly their children. Even though these women are currently not

28. Under Israeli law, employers are also required to pay 16 percent of the migrant employee salary into a fund that is paid to the employee who departs Israel after employment. This deposit measure does not eliminate that payment but imposes new obligations on employees who entered Israel through Sinai. Moreover, RI is also concerned by reports that the Israeli government has begun to confiscate some of that employer contribution with respect to those African migrants who have resisted deportation.

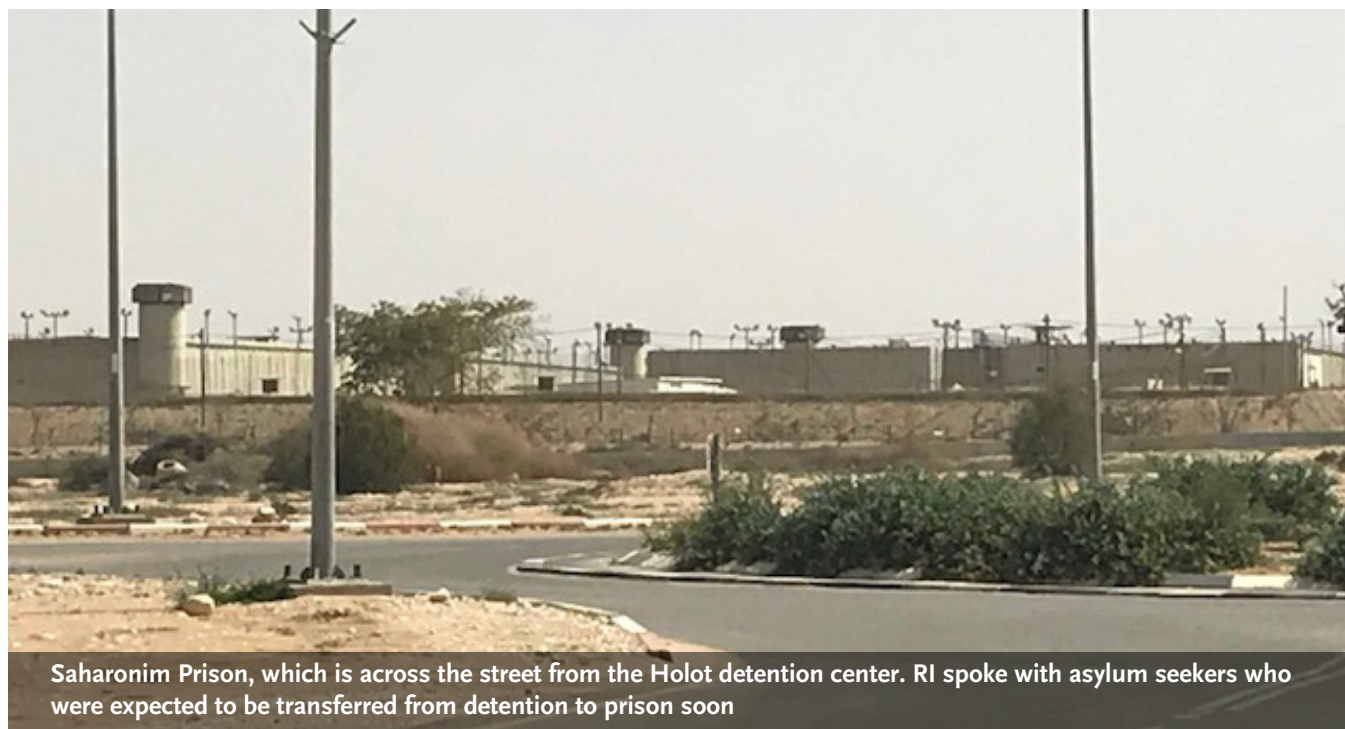
targeted for deportation or detention, they feel that “the government can do what it wants” so the uncertainty has been crippling. One NGO staff member told RI, “Some women are very strong and bear it. It is like they are all swimming but some are underwater.” The challenges were more starkly described by an Eritrean woman who works with asylum seekers. As she put it to RI, “Women have no status. No identification.”

“My son is nine and a half. He is asking all sorts of questions I can’t answer. He is also acting out and maybe it is because of the situation. If I told him [what is actually happening], he would be afraid.”

— *Ruta, Eritrean asylum seeker*

SUBSEQUENT DEVELOPMENTS AND THE ISSUE OF RELOCATION TO RWANDA AND UGANDA

In the first months of 2018, and despite the Israeli government’s prior assurances in court that it had reached an arrangement with Rwanda on what amounted to involuntary relocation of asylum seekers, the policy was not moving forward, and Israeli officials found themselves seeking renewed arrangements with both the Rwandan and Ugandan governments. Both governments may have been uncertain about being seen as complicit in a policy that provided asylum seekers the choice of relocation or indefinite detention in Israel. As of mid-April 2018, the Government of Rwanda had already apparently rejected an arrangement on such relocation. By the end of April, Israeli efforts to convince the Government of Uganda to agree to such an arrangement also apparently collapsed.²⁹



Saharonim Prison, which is across the street from the Holot detention center. RI spoke with asylum seekers who were expected to be transferred from detention to prison soon

29. See, e.g., Michael Schaeffer Omer-Man, “Rwanda Is Out, but Israel Says It Can Still Deport Refugees to Uganda?” +972, April 4, 2018, <https://972mag.com/rwanda-is-out-but-israel-says-it-can-still-deport-refugees-to-uganda/134408/>. See also “PM’s Envoy to Uganda to Return to Israel, Apparently without Deal on Migrants, April 15, 2018. *Times of Israel*, <https://www.timesofisrael.com/pms-envoy-to-uganda-to-return-to-israel-apparently-without-deal-on-migrants/>

Nonetheless, given the continuing uncertainty surrounding these arrangements and the future of the Eritrean and Sudanese caseloads, it is worth reviewing the evolution of coerced relocations from Israel to Uganda and Rwanda.

As mentioned, some 4,000 asylum seekers were relocated to Rwanda and Uganda from 2014 through 2017 under prior arrangements, and elements of that experience demonstrate clearly why any efforts to establish any new program should come to an end.

First, Rwanda and Uganda are already refugee hosting countries, with Rwanda providing refuge to some 170,000 refugees and asylum seekers, mainly from Burundi and the Democratic Republic of the Congo,³⁰ and Uganda hosting more than a million refugees, mainly from South Sudan.³¹ Moreover, gross domestic product per capita in Israel is over 50 times the level in Rwanda and Uganda.³² Thus, as a matter of best protection and resettlement practices, it makes little sense for a country like Israel to be exporting its refugee population to Rwanda and Uganda—especially when the total number of these asylum seekers in Israel represents less than 0.5 percent of Israel’s population, with no new entries expected due to construction of the border fence.

Second, those arrangements that have existed have been shrouded in secrecy. Both governments have offered conflicting statements,³³ and the secrecy involved in

arrangements have made it impossible to monitor effectively the return process or to establish any kind of accountability.

Third, what we do know about arrangements that were made is extraordinarily troubling. They involve nefarious activities that have created grave risks. And they are all the more troubling in view of assurances given by Israeli officials to the asylum seekers that they will be arriving in a “safe third country” that will provide them with residency status and permission to work.³⁴

As described to RI, in Rwanda, asylum seekers arrived at the airport in Kigali, where documents given to them by the Israeli authorities were taken, after which the asylum seekers were brought into the city. After arrival in Kigali, asylum seekers were soon pressured to leave Rwanda and were taken to Uganda. Nonetheless, at the time of RI’s visit to Israel, a small number of asylum seekers sent to Rwanda had remained there and had made application for asylum, but those requests had yet to be heard. Moreover, the individuals concerned did not seem to have certainty about their status in the country. In particular, temporary residence permits that they had initially received had not been extended.

Reports strongly indicate that in Uganda, asylum seekers have also been sent to very uncertain and precarious situations. Asylum seekers would be met at the airport and taken through an alternative means of access and brought

30. United Nations Refugee Agency (UNHCR) Global Focus, “Rwanda,” 2018, <http://www.unhcr.org/en-us/rwanda.html>.

31. UNHCR Global Focus, “Uganda,” 2018, http://reporting.unhcr.org/node/5129#_ga=2.118577417.1471945868.1523290014-205553634.1513620647.

32. International Monetary Fund, World Economic Outlook Database. October 2017. <https://goo.gl/nD4zTi>

33. For additional information on what each government said publicly through early in the year, see, e.g., Shoshana Kranish, “Rwanda Denies Existence of Deal to Accept African Migrants from Israel,” *Jerusalem Post*, January 23, 2018, <http://www.jpost.com/Israel-News/Rwanda-denies-existence-of-deal-to-accept-African-migrants-from-Israel-539540>; Edmund Kagire, “African Migrants Welcome to Kigali, but Law Applies,” *The East African*, February 24, 2018, <http://www.theeastafrican.co.ke/news/African-immigrants-welcome-to-Rwanda/2558-4318022-xtjlm0/index.html>; News Wires, “Rwanda and Uganda Deny Agreement with Israel to Host African Migrants,” *France 24*, January 5, 2018, <http://www.france24.com/en/20180105-rwanda-uganda-deny-deal-with-israel-take-african-migrants-sudan-eritrea>; Michael Schaeffer Omer-Man, “Rwanda Is Out, but Israel Says It Can Still Deport Refugees to – Uganda?” +972, April 4, 2018, <https://972mag.com/rwanda-is-out-but-israel-says-it-can-still-deport-refugees-to-uganda/134408/>.

34. A notice provided to asylum seekers provides such assurances. See Yona Schnitzer, “Israel Begins to Issue Official Deportation Orders to illegal African Infiltrators,” *Tazpit News Agency*, February 4, 2018, published in *JewishPress.Com* <http://www.jewishpress.com/news/israel/state-begins-to-issue-official-deportation-orders-to-illegal-african-infiltrators/2018/02/04/>

to a hotel. Asylum seekers were approached by individuals who told them they were illegal in Uganda and that they would be taken out of the country, and then exerted pressure on the asylum seekers to leave. The asylum seekers needed to make fast decisions about staying or leaving the country. RI was told that, if they decided to stay, “they are on their own.” RI was further informed that while such people could register with the police in Uganda and then with the refugee status determination (RSD) unit, those deemed to have come from Israel have had great difficulties obtaining asylum. In any event, a very small percentage of people seem to have remained in Uganda; most of them do not have status or jobs.

One interviewee in Israel told RI that members of his family were killed in Libya after being relocated to Rwanda and sent to Uganda, and then transiting through South Sudan and Sudan before arriving in Libya. Reacting to the dangers of the relocation process, another asylum seeker told RI, “I’m not from there [Rwanda or Uganda]. It is not connected to me. They know I am from Eritrea and there is a problem there. [If they want me to leave, the Israelis] should take me back to the border with Egypt—I know that country.” In his view, it would be better to be in Egypt than getting killed by ISIS in Libya. In the end, he said, “If I had to choose, I prefer to be in prison here in Israel for life.”

A SOLUTION TO THE AFRICAN ASYLUM SEEKER ISSUE EMERGES AND THEN IS REVERSED BY THE GOVERNMENT OF ISRAEL

In a surprise development announced on April 2, 2018, UNHCR and Israel reached an understanding reflected in what UNHCR termed a Framework of Common Understanding, focused on solutions for Eritreans and Sudanese in Israel. The agreement envisioned

those solutions emerging over five years and involving some 39,000 people. Under the agreement, signed by UNHCR Assistant High Commissioner for Protection Volker Türk, as well as by Prime Minister Netanyahu and Minister of Internal Affairs Arye Machluf Deri, some 16,000 Eritreans and Sudanese would depart to third countries, while the remainder would be granted legal status in Israel. Though the specifics of legal status were not spelled out in the announcement of the Framework, this agreement was widely hailed as a solution to a long-standing policy challenge.³⁵

In defending the agreement with UNHCR, the Israeli prime minister and other government officials made a number of arguments to the Israeli public, many of which reflected points that advocates for the African asylum seekers had been making for years: that the so-called third-country relocation option was not realistic or workable; that a large number of African asylum seekers would have inevitably remained in Israel with or without an agreement with UNHCR; and that the agreement and the ability to avoid the prospect of detention for possibly thousands of asylum seekers would free up resources for social and economic development of communities affected by arrivals of asylum seekers.³⁶

However, none of those arguments were highlighted on April 3, when, in a stunning reversal, Prime Minister Netanyahu announced he would cancel the agreement. The announcement came after strong expressions of opposition to the agreement among the prime minister’s supporters as well as Cabinet members. Although UNHCR urged the prime minister and the government to reconsider this decision, the agreement remained cancelled as of late April 2018.

As noted above, recent efforts by the Israeli government to reach agreements with Rwanda and Uganda to deport asylum seekers from Sudan and Eritrea appear to have collapsed. In addition, as of late April 2018, it appeared that plans for large-scale deportations were off the table

35. UNHCR Press Release, “UNHCR and Israel Sign Agreement to Find Solutions for Eritreans and Sudanese,” April 2, 2018, <http://www.unhcr.org/news/press/2018/4/5ac261bd4/unhcr-israel-sign-agreement-find-solutions-eritreans-sudanese.html>.

36. Amir Alon, Adi Rozenberg, and Moran Azulay, “Israel Reaches Agreement with UN to Resolve African Migrant Crisis,” Ynet News, April 2, 2018, <https://www.ynetnews.com/articles/0,7340,L-5217069,00.html>.

for the time being. On 24 April, the Israeli government announced that it would refrain from deporting Sudanese and Eritrean asylum seekers to third countries. The announcement came in response to a petition filed with Israel's High Court by human rights groups to block the government from carrying out a plan to deport these asylum seekers. Prime Minister Netanyahu responded by declaring his intention to reopen the Holot detention

center, presumably to house those who would have been deported.³⁷ The prime minister's coalition has also indicated that it would advance new legislation designed to circumvent court restrictions on abuses against asylum seekers, such as indefinite detentions and deportation to countries where their lives or freedom would be at risk.

CONCLUSION

Integrating some tens of thousands of asylum seekers into Israel is a challenge, but hardly an insurmountable one—and it offers the government the opportunity to take advantage of the industry, perseverance, and determination of a community of individuals who are guilty of nothing more than seeking protection and refuge. In fact, African asylum seekers make up only a small percentage of the total number of foreigners living in Israel. For example, it is believed that about 92,000 individuals have overstayed their visas in Israel, including 74,000 tourists and 18,000 migrant workers. The government has not made a concerted effort to remove these groups, and it continues to recruit migrant workers to perform jobs in sectors that do not attract Israeli citizens.

Moreover, if the government expressed a willingness to permit the permanent residence of the bulk of this population, it would have a better chance of identifying other traditional resettlement countries—like the United States and Canada—whose governments might be willing to receive some number of Eritrean and Sudanese asylum seekers. In fact, Canada already intends to receive more than 1,000 African asylum seekers from Israel in 2018, and other Western governments are already receiving modest numbers. A return to the Framework of Common Understanding by Israel could inspire greater action from such governments. It would also be an honorable alternative to current measures that demonize this population and perpetuate enormous and unnecessary human suffering.

37. David Horovitz, "How Netanyahu turned victory into all-around defeat in African migrant crisis," *Times of Israel*, April 25, 2018, <https://www.timesofisrael.com/how-netanyahu-turned-victory-into-all-around-defeat-in-african-migrant-crisis/>.

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