



ארגון סיוע לפליטים  
ולמבקשי מקלט בישראל

HOTLINE for REFUGEES and MIGRANTS



# Where there is No Free Will



**Israel's "Voluntary Return"  
procedure for asylum-seekers**

April 2015

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## Israel's "Voluntary Return" procedure for asylum-seekers



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**The Hotline for Refugees and Migrants** is a nonpartisan nonprofit association which aims to protect and promote the human rights of migrant workers and refugees, and prevent human trafficking, in Israel. We are committed to eradicating the exploitation of migrants, ensuring they receive respectful and fair treatment, and formulating government policy to this end. We seek to lend our voice to those whose are not heard in the public sphere and build a just, equal, and democratic Israeli society. The organization acts by providing information, counsel, and legal representation to migrants, educating the Israeli public, and promoting legislation and public policy.

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**ASSAF** – Aid Organization for Refugees and Asylum Seekers in Israel is a nonpartisan nonprofit organization providing guidance and support to thousands of asylum seekers living in Israel without civil status, work permits, or access to welfare and health services, including victims of torture and trafficking, people with physical and mental disabilities, children, women, youth, victims of violence, and more. In parallel, ASSAF conducts education and information activities for the Israeli public about asylum seekers, their stories in their countries of origin, and the severe repercussions their living without rights in Israel, in order to raise public awareness of their distress and improve their situation.

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This report was published with the generous support of  
the Foundation for Migration, Population and Environment (PME)

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\* All asylum seekers' names in the report have been changed in order to protect their privacy and safety, unless otherwise stated. The original names are kept with the authors.

# Introduction

**"I did not want to leave Israel, but Immigration gave me a summons and said – it's either this or Sudan. I had no choice. I did not want to be in prison again. I was already in Saharonim when I entered Israel."**

Suliman, an asylum seeker from Darfur<sup>1</sup>

**"An Immigration Authority representative at Holot gave me documents and told me: 'Sign that you are signing this voluntarily and that we are not forcing you to.' That was all he told me – to sign that I am leaving voluntarily. But I did not leave voluntarily. I did it because I had no choice. I had to get away from prison. They forced me to, and I had to leave."**

Mikele, an asylum seeker from Eritrea<sup>2</sup>

9,026 African asylum seekers have "voluntarily" left Israel over the past two years.<sup>3</sup> According to the State of Israel, 1,205 of them left to countries that are not their countries of origin (Sudan or Eritrea.) The state authorities claim to have secured transfer arrangements for asylum seekers who "voluntarily" agree to leave Israel to two third countries – Rwanda and Uganda. Such agreements have remained secret and the identities of the receiving countries have not been formally verified.<sup>4</sup>

As the testimonies gathered here show, the Israeli authorities use a myriad of methods to coerce asylum seekers to leave Israel, including prolonged imprisonment in Saharonim prison, detention in the Holot detention facility, withholding of status, withholding of work permits, the requirement to frequently renew "Conditional Release" permits, as well as degrading and humiliating treatment at the hands of the authorities.

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<sup>1</sup> Interview held in September 2014.

<sup>2</sup> Interview held in January 2015.

<sup>3</sup> 2,612 left in 2013, according to the Population Authority, Foreigners in Israel, edition 3/2014, Table a2; and 6,414 left in 2014, according to section 44 of the State's response on January 27, 2015, on HCJ 8665/14 Desta et al. v. the Knesset et al. : <http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/563343n80.pdf> <http://www.acri.org.il/he/wp-content/uploads/2015/01/hit8665meshivim2-5-0115.pdf> [State's letter of response, Hebrew]

<sup>4</sup> According to Section 45 of the State's response dated January 27, 2015, to HCJ 8665/14 Desta et al. v. the Knesset et al. : <http://www.acri.org.il/he/wp-content/uploads/2015/01/hit8665meshivim2-5-0115.pdf> [State's letter of response, Hebrew]

This short report aims to document the journey of several asylum seekers who left Israel in 2014, either to their countries of origin or to a third country in Africa, with the assistance of the Ministry of the Interior's Voluntary Returns Unit. The report describes the reasons and circumstances that have led to their departure, and portrays their lives after leaving Israel.

The number of asylum seekers departing to their countries of origin significantly dropped after the first three months of 2014. While Eritreans rarely ever left to Eritrea, many Sudanese nationals returned to Sudan in early 2014. Of those who returned to Sudan, individuals suspected of political activism or community activism in Israel, faced arbitrary detention, torture or other ill treatment, and accusations of spying for Israel upon arrival to Sudan. Following their release from prison, some were subjected to harassment by the Sudanese authorities.

Throughout 2014, especially from late March onwards, an increasing number of asylum seekers began leaving Israel to third countries. Their testimonies paint a picture of a chaotic and unmonitored transfer procedure: Those departing did not receive any information on their country of destination, were liable to be arrested upon arrival, and faced difficulties accessing asylum procedures because their identifying documents were taken away when they arrived.

Israel's procedure for "Voluntary Return" to third countries does not guarantee that asylum seekers are protected against refoulement to their country of origin or that they have access to basic services and rights. Asylum seekers are not individually assessed prior to transfer, and no regular monitoring or follow-up takes place – all in complete disregard of recommendations by UNHCR.

In light of the lack of protection and access to rights in the third countries, many of those who leave continue on their journey towards Europe, a journey during which they face arbitrary arrests, demands for ransom, and abuse at the hands of smugglers.

In addition to questions regarding the lawfulness of Israel's "Voluntary Return" procedure, testimonies have raised grave concerns regarding the conduct of the Israeli authorities.

In two cases, for instance, asylum seekers who thought they were on their way to a third country were effectively deported to their country of origin. In other cases, an Immigration Authority representative allegedly provided asylum seekers with forged passports.

In conclusion, Eritrean and Sudanese nationals who are forced to choose between leaving Israel and prolonged detention do not necessarily leave "voluntarily." The procedure for the "voluntary" return to Eritrea or Sudan of those imprisoned in Holot or facing imminent risk of detention constitutes a violation of the principle of non-refoulement – the prohibition against forcibly returning "in any manner

whatsoever” a refugee or asylum seeker to a risk of persecution, likely torture or inhuman and degrading treatment.

Gathering information on those who have left Israel is challenging, and much remains unknown. Nonetheless, in light of the information revealed here, the State of Israel should re-examine to what extent those subject to its removal proceedings are really making voluntary decisions and take its share of the global responsibility for people seeking international protection – instead of exposing them to additional dangers.

## Methodology

A great deal of information has accumulated over the years as a result of the human rights organizations’ ongoing work with asylum seekers in Israel. This report seeks to specifically document those asylum seekers who have left Israel since the opening of the Holot facility in December 2013. The authors conducted extensive interviews, some by telephone and some in person, with activists from the asylum seeker community in Israel, with eight Sudanese nationals repatriated to Sudan from Israel, with three relatives of Sudanese nationals who returned to Sudan and were imprisoned in Khartoum, and with one man who was repatriated to Eritrea due to errors in his departure process. 25 asylum seekers were interviewed after leaving Uganda or Rwanda. 14 asylum seekers who had decided to leave Israel were interviewed before leaving. All told, the interviews included 47 individual asylum seekers who had left or were about to leave Israel, of them one woman. 33 of the interviewees are Darfur natives, one is from the Nuba Mountains, one from another part of Sudan, and twelve from Eritrea. 21 of the 24 interviewees who left to third countries noted that they had applied for asylum in Israel. Six of them noted they had requested asylum in 2007-8, and four in 2009-10. None of them received a response accepting or rejecting the asylum application.<sup>5</sup>

Collecting testimonies from departing asylum seekers is a challenge, for a number of reasons. First of all, many asylum seekers who decide to leave avoid making their decision known or talking about it, both because of the harsh emotional effect on the people around them, and for fear of speaking in public about their future presence in countries where they may be in danger. In addition, many of the

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<sup>5</sup> The Immigration Authority did not allow Sudanese and Eritrean nationals to submit asylum applications until early 2013 if they were in prison, or until the end of 2013 if they were outside prison. In the years before that, asylum seekers submitted their requests to the UNHCR, although Israeli authorities did not consider these official asylum applications. See the Hotline for Refugees and Migrants report, December 2014: <http://hotline.org.il/en/publication/no-safe-haven/>

departing asylum seekers leave with very bitter feelings about the treatment they received in Israel, and want no part in anything related to it. In addition, it was only possible to track down interviewees who had a telephone or Internet access.

Many, especially of those in Sudan, refused to talk with human rights organizations for fear that their name or the very fact of the conversation would be revealed, subjecting them to scrutiny by the authorities. Those who did agree to the interviews did so despite the danger. Some noted explicitly that the authorities in Sudan were listening in on their phone lines, and used a different phone number for the interview. Needless to say, it was impossible to talk with those who are still imprisoned in Sudan, or those who – according to what we heard from various witnesses, but could not verify – were killed or murdered on their way to a safe place. In addition, there were those who were afraid of exposure as they did not know where they had yet to go on their journey, and so could not know if such conversations might endanger them in the future. In addition, it is impossible to contact asylum seekers who have returned to Eritrea and still reside there, due to the extreme restrictions in that country, where Internet access is available only to regime associates and at tourist hotels.

The report does not include testimonies or details which could expose the identity of interviewees, and all names appearing have been changed unless noted otherwise.



# Background

## Legislative developments and the “Voluntary Return” procedure

The third amendment to the Anti-Infiltration Law – which allowed Israel to imprison asylum seekers who entered the country without authorization for three years<sup>6</sup> – was struck down by the High Court of Justice (HCJ) in September 2013.<sup>7</sup> Subsequently, the fourth amendment was passed and rapidly made into law in December 2013. According to this amendment, asylum seekers entering Israel were imprisoned for one year, after which they were transferred to the Holot facility for an indefinite period of time.<sup>8</sup> In addition to those just arriving in Israel, asylum seekers (called “infiltrators” in the law) from around the country were summoned to the facility, where they as well were to be held indefinitely.<sup>9</sup>

The fourth amendment was struck down by the HCJ in September 2014.<sup>10</sup> In response, the Knesset passed an additional amendment to the Anti-Infiltration Law in less than three months.<sup>11</sup> The amendment, which came into effect on 18 December 2014, shortened the term for new “infiltrators” from one year to three months, and limited the term of imprisonment at the Holot facility to 20 months. According to the current amendment, “infiltrators” employed in Israel are required to deposit 20 per cent of their salary, and their employer a further 16 per cent, in a deposit to be given to the employees only upon their departure from Israel. In

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<sup>6</sup> Anti-Infiltration Law (Offenses and Adjudication) (Amendment No. 3 and Temporary Order), 5762-2012.

<sup>7</sup> HCJ 7146/12 Adam and Al. v. the Knesset and Al. (Sept. 16, 2013) : <http://elyon1.court.gov.il/files/12/460/071/b24/12071460.b24.htm> [Hebrew]

<sup>8</sup> Holot facility is an open detention facility run by the Israeli Prison Authorities. Information about the life of asylum seekers in Holot can be found in the reports; “From One Prison to Another”, July 2014 at <http://hotline.org.il/en/publication/holotreporteng/> and “Managing the Despair”, November 2014 at <http://hotline.org.il/en/publication/managing-the-despair/>

<sup>9</sup> Anti-Infiltration Law (Offenses and Adjudication) (Amendment No. 4 and Temporary Order), 5674-2013. <http://old.justice.gov.il/NR/rdonlyres/A266017C-3CB7-49A9-9C29-675B3F9BA175/42749/2419.pdf> [Hebrew]

<sup>10</sup> HCJ 7385/12 Eitan - Israeli Immigration Policy v. Government of Israel (Sept. 22, 2014). <http://elyon2.court.gov.il/files/13/850/073/M19/13073850.M19.htm> [Hebrew]

<sup>11</sup> Bill: Law for Prevention of Infiltration and to Ensure the Departure of Infiltrators and Foreign Laborers from Israel (Legislative Amendments and Temporary Provisions) 5775-2014. <http://www.justice.gov.il/NR/rdonlyres/2CD8DDF6-71EB-45E3-B192-C62B8D65009D/43424/904.pdf> [Hebrew]

addition, a planned section of the Economic Arrangements Law would subject "infiltrators" to a head tax of an additional 30 per cent of their wage. Human rights organizations have submitted an appeal against the amendment, still pending before the HCJ at the time of writing.<sup>12</sup>

One of the main purposes of the amendments to the Anti-Infiltration Law, and of Israel's policy regarding refugees and asylum seekers in general, is encouraging departure from Israel. In July 2013 the Attorney General formulated a "Voluntary Return" procedure. Four months earlier he had outlawed "voluntary returns" from prison, following criticism of the intense pressure placed upon imprisoned asylum seekers to leave Israel. According to the procedure applicable since July 2013, inmates at Saharonim undergo a documented interview and sign a document saying that they ask to leave Israel. According to testimonies by asylum seekers they were instructed to answer that they would not want to stay in Israel even if they were released from their prison. Asylum seekers outside prison are not subject to the "Voluntary Return" procedure, nor are asylum seekers detained at the Holot facility, as the State claims the facility is not a prison.

The "Voluntary Returns" Unit of the Population and Immigration Authority is responsible, among other things, for arranging flights and producing transit papers for asylum seekers who are not imprisoned. Those departing receive the travel documents and their departure bonus of USD 3,500 only at the airport, upon departure. According to the procedure, asylum seekers who hold a passport can leave to their countries of nationality, while those unable to obtain a valid passport depart to a third country: Uganda or Rwanda. Among the interviewees, some testified that they awaited their flight between two and eight months, but waiting times have become significantly shorter lately. One asylum seeker who departed from Saharonim prison to Uganda on February 12, 2015, said he waited for his flight for just one month.

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<sup>12</sup> The human rights organizations' appeal HCJ 8665/14 Desta et al. v. the Knesset et al., dated December 18, 2014, against the Bill: Law for Prevention of Infiltration and to Ensure the Departure of Infiltrators and Foreign Laborers from Israel (Legislative Amendments and Temporary Provisions) 5775-2014: <http://hotline.org.il/legal-action/bagatz5> [Hebrew]

## Improper conduct and suspected forgery of travel documents by Immigration Authority representatives

The testimonies collected raise concerns about the conduct of the authorities within the "Voluntary Return" procedure. In one case, Ephrem, an asylum seeker from Eritrea, left Israel in July 2014 after agreeing to leave to Uganda. Following a layover in Egypt, he and two other Eritreans were deported to Eritrea (further details on page 30). In another case, Sadik al-Sadik (his real name), an asylum seeker from Darfur, told the officials arranging his departure that he had no passport. He received a passport from a unit representative, which showed the details of another Sudanese national and al-Sadik's own picture. al-Sadik clarified that he could not return to Sudan, and a unit representative let him understand that he would be flown to a third country. Only at the airport did al-Sadik discover that his flight's destination was Sudan, with a layover in Ethiopia (further details on pages 31-32.)

In another case, Idris, an asylum seeker repatriated to Sudan in April 2014 after being summoned to Holot, testifies that he received another person's passport from Unit representatives:

***"When I entered Israel, Immigration took my passport at Saharonim, and every time I asked for it they did not give it back. The last time I went to Immigration to ask for my passport, they said I would get my passport if I signed for my return to Sudan. But still when I signed they did not return my passport. When I signed for going back, they gave me someone else's passport."***<sup>13</sup>

Over the past year, human rights organizations have received several testimonies of asylum seekers who said their friends had left Israel using forged Sudanese passports given to them at the Immigration Authority offices. Other said a representative of the "Voluntary Returns" Unit offered them to buy a forged Sudanese passport if they wished to return to Khartoum, Sudan, rather than Uganda or Rwanda. Ismail, a Sudanese asylum seeker, said that when his wife asked to leave for Khartoum and did not have a passport, an Immigration Authority representative asked for his (Ismail's) passport, and used it to make his wife a passport, with her picture and name, which she used to return to Sudan via a third country.

On September 1, 2014, an indictment for fraud, accepting bribery, breach of trust, as well as forgery of a document by a public servant was filed against Ofer Shmueli, a senior employee of the "Voluntary Returns" Unit of the Immigration Authority. According to the indictment, an Eritrean asylum seeker without a

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<sup>13</sup> Interview held in September 2014.

passport approached the unit in July 2014, and Shmueli claimed he could "take care of that" for 1,000 NIS.. The indictment indicates that Shmueli "took some passport that was in his office and belonged to another person from the African continent and instructed the complainant to paste his picture in the passport." As the asylum seeker did not know how to do this, Shmueli gave him the forged passport only a few days later, with the asylum seekers' picture placed instead of the original passport holder's photograph.<sup>14</sup>

## Reasons for "voluntary Return"

### 1. Imprisonment

Of the 47 asylum seekers interviewed for this report, thirteen noted they decided to leave Israel only after being sent to the Holot facility, five decided to leave while they were imprisoned at the Saharonim prison, and twelve more left Israel after being summoned to Holot or fearing that they would be. Note that the UNHCR Handbook dictates that a refugee returning to their country of origin must do so of their own free will and informed consent, and not due to improper pressure, that is, not for reasons which press them to leave the country in which they had sought refuge.<sup>15</sup>

Dawit, an Eritrean asylum seeker, left Israel from the Holot detention facility in June 2014, and testified:

**"You do it under pressure. Prison is pressure. You can't make a family in prison. At the Ministry of the Interior they ask people private questions about their woman, how you have sex with her. It's all part of the pressure."**<sup>16</sup>

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<sup>14</sup> CC 08-14 State of Israel v. Ofer Ben Avraham Shmueli, Tel Aviv–Yafo District Court, September 1, 2014.

<sup>15</sup> According to the UNHCR Handbook of December 2004. Available at: UN High Commissioner for Refugees (UNHCR), Handbook - Voluntary Repatriation: International Protection, January 1996, page 10, para. 2.3 <http://www.refworld.org/docid/3ae6b3510.html>; UNHCR Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees No. 101 (LV) 2004

<sup>16</sup> Interview held in December 2014.

## 2. Difficulty renewing permits

In the past two years, the Immigration Authority has reduced the number of offices at which asylum seekers may renew their conditional release permits, from 24 offices to just three, and shortened the reception hours at these offices. The validity of the permits was shortened as well, from six months to just four, recently shortened yet again to just one or two months.<sup>17</sup> The difficulty to renew permits constitutes an additional factor in asylum seekers' decisions to leave Israel. Senait, an asylum seeker from Eritrea, testified:

***"I thought about leaving when I had to renew my permit a few months ago and couldn't. There were long lines everywhere, I tried a few times in different cities, and when I couldn't renew my visa, my employer fired me. I thought of going back because life is too hard here with a little girl. I thought of trying to get to Europe through Sudan and Libya."***<sup>18</sup>

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<sup>17</sup> For more on the pressure at the Immigration Authority offices see the Hotline for Refugees and Migrants reports: "'Streamlining the Process': On the Mistreatment of Asylum Seekers by the Immigration Authority When They Renew Their Restricted Release Permits", March 2014. <http://hotline.org.il/en/publication/streamlining-the-process/>; "'The Entrapment Policy': Mistreatment of Asylum Seekers by the Immigration Authority When They Renew Their Permits", December 2014. <http://hotline.org.il/publication/entrapmentpolicy> [Hebrew]

<sup>18</sup> Interview held in August 2014.

### 3. Hate crimes and racism

In 2012, following increased incitement on the part of elected officials and religious leaders, a significant increase in hate crimes against asylum seekers could be observed.<sup>19</sup> Some noted the rise in hate crimes and racism among their reasons for leaving. Ibrahim from Darfur says:

***"You are never sure if they will renew your visa or not, you have no rights, and when you walk down the street people shout out to you, 'Go home, Negro.'" But the main reason I decided to leave is the pressure to go to Holot. Even if I'm murdered in Sudan, it's better than the slow torture of life in prison."***<sup>20</sup>

In most cases, as Ibrahim from Darfur clarifies here, the reason for departure is composed of the array of pressures placed on the asylum seekers under government policy. While imprisonment may be the harshest of these pressure, many of the affected asylum seekers cannot bear life under ever-changing decrees; the need to renew the conditional release permits every month or two; the massive queues where thousands stand in line for days on end, including women in late pregnancy, in order to receive a permit; the humiliating interviews during the asylum application process and during permit renewals; the arrests; and the levies and fines placed upon them and their employers in order to cause them to lose their jobs.

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<sup>19</sup> For more on hate crimes, see the Hotline for Refugees and Migrants report: "'Cancer in Our Body': On Racial Incitement, Discrimination and Hate Crimes against African Asylum-Seekers in Israel," July 2012. <http://hotline.org.il/en/publication/cancer-in-our-body-eng/>

<sup>20</sup> Interview held in June 2014.

# Return to countries of origin

**"When I got to the airport in Khartoum, Sudanese security forces took me. They asked me what I did in Israel, why I went to Israel, they beat me and kicked me while I was on the ground. They took all of my things, I am afraid they will capture me again."**

(Suliman, a Sudanese asylum seeker who returned to Sudan in February 2014)

**"What happens to them there? They are in contact with their friends here. When I visited Holot, I heard from people who are in contact with people who returned to their countries of origin, we know nothing of anything very bad that happened to any of them. When someone told me such and such rumors I asked him to show me facts. We never got any other information. I think if there was a different reality on the ground, this big wave of leaving would not have happened, and definitely would not have continued."**

(Gideon Sa'ar, Knesset Internal Affairs and Environment Committee, March 26, 2014)<sup>21</sup>

Gideon Sa'ar, Minister of the Interior at the time, made the above statement during a meeting held to mark 100 days since the fourth amendment to the Anti-Infiltration Law was passed. At this time, the number of asylum seekers leaving the country as part of the "Voluntary Return" procedure was at a peak. In the first quarter of 2014 – just after the Holot facility had opened– 3,972 Sudanese, Eritrean, and other African nationals left Israel – almost 62 per cent of the total 6,414 who left Israel in 2014.<sup>22</sup> The "big wave of departures," as Sa'ar calls it, did not continue past the amendment's first 100 days. State data indicates that after the first three months of 2014 the number of asylum seekers returning to their countries of origin dropped dramatically.

<sup>21</sup> From protocol no. 263, meeting of the Knesset Internal Affairs and Environmental Protection Committee, p. 29.

<http://www.knesset.gov.il/protocols/data/rtf/pnim/2014-03-26.rtf> [RTF, Hebrew]

<sup>22</sup> A total of 823 people left in the second quarter, 956 in the third, and 663 in the fourth. From the State's response on January 27, 2015, to HCJ 8665/14 Desta et al. v. Knesset et al. <http://www.acri.org.il/he/wp-content/uploads/2015/01/hit8665meshivim2-5-0115.pdf01> [Hebrew]

## “Voluntary Return” to Sudan

### Sudan and asylum seekers from Sudan: Current situation

According to reports by international human rights organizations, Sudanese asylum seekers are at risk of unlawful arrest, persecution, and torture on the part of the Sudanese security forces when returning from the countries in which they had sought refuge.<sup>23</sup> Sudan is a country afflicted by droughts and starvation, which for years has suffered military coups and a harsh and protracted civil war. In the wake of the war, millions have been forced to leave their homes and have suffered from hunger, undernourishment, and impaired health and educational services. In addition to the civil war between the North and the South, an additional rebellion broke out in the region of Darfur, in West Sudan, in 2003. To suppress the rebellion, the government provided arms to militias fighting against the rebels. This conflict, which has become an ethnic conflict, includes mass rape and massacres, and is considered genocide by some.

In 2011, South Sudan declared its independence from the Republic of the Sudan. In mid-2011 there were reports of indiscriminate bombardment, striking combatants and civilians alike; attacks against civilians by all sides of the conflict, including the Sudanese military; and a lack of government protection for civilians. Today there are still widespread reports of physical and sexual violence against women, and of children being conscripted and armed. Human rights abuses in Sudan also include arbitrary arrests, imprisonment, and torture of detainees.<sup>24</sup>

### Sudanese asylum seekers in Israel and “voluntary Return”

Because State data implies that some 60 per cent of the asylum seekers who left Israel in 2014 were Sudanese nationals who returned to Sudan,<sup>25</sup> it appears that the dramatic decline in the number of asylum seekers departing after the first three months of 2014 applies primarily to them. As Sa’ar argued, the number of departures is indeed affected by the reality on the ground, and the

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<sup>23</sup> From Amnesty International’s June 2013 report: [www.amnesty.org/en/library/asset/MDE15/005/2013/ar/07259891-b209-4058-b370-e76c3cdccfe8/mde150052013en.pdf](http://www.amnesty.org/en/library/asset/MDE15/005/2013/ar/07259891-b209-4058-b370-e76c3cdccfe8/mde150052013en.pdf)

<sup>24</sup> HCJ 7146/12 Adam et al. v. the Knesset et al., Justice Arbel, para. 6: <http://www.elyon1.court.gov.il/files/12/460/071/b24/12071460.b24.htm> [Hebrew.]

<sup>25</sup> In 2014, 4,112 Sudanese nationals left Israel, some 80 per cent of them in the first quarter. Most of them left to Sudan. [http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/2014\\_sum.pdf](http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/2014_sum.pdf) [Hebrew]



Sudanese asylum seekers have stopped leaving to Sudan. Sudanese asylum seekers are especially vulnerable to pressure to sign for "voluntary" departure, by means of imprisonment at the Holot facility. Although by the government's own admission Sudanese nationals may not be deported, the broadest criteria for summonses to Holot are those applying to Sudanese nationals: every Sudanese national who entered Israel before May 31, 2011, and does not meet the exemption criteria, will be summoned. The government's response on to HCJ Desta et al. v. the Knesset et al., given on February 16, 2015, indicates that 76 per cent of the 1,940 detainees at the Holot facility are Sudanese nationals (1,476 detainees),<sup>26</sup> although according to Ministry of the Interior data they constitute only 19 per cent of all African asylum seekers in Israel as of January 2015.<sup>27</sup> Of those who submitted asylum applications, not a single Sudanese national has been recognized as a refugee.

The Sudanese Government considers Israel an enemy state. Sudanese law forbids citizens from being in contact with Israel, imposing heavy penalties on those who have entered Israel.<sup>28</sup> Anyone in Sudan suspected of contact with Israel or of being Jewish may be in danger.<sup>29</sup> Sudan's National Intelligence and Security Service (NISS) treats all real or supposed regime opponents and critics cruelly.<sup>30</sup> Sudanese nationals who have spent time in Israel and returned to Sudan, in particular activists associated with Sudanese political opposition groups and people who were active in community organizations in Israel, are exposed to arbitrary imprisonment, torture and persecution by Sudanese security forces.

On January 15, 2015, the European Court of Human Rights ruled on two separate cases that the expulsion of Sudanese nationals from France would constitute a violation of Article 3 of the European Convention on Human Rights, which

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<sup>26</sup> According to the State's response to the HCJ on February 16, 2015. <http://www.acri.org.il/he/wp-content/uploads/2015/02/hit8665meshivim2-5-0215.pdf> [Hebrew]

<sup>27</sup> According to Population, Immigration and Border Authority, Foreigners in Israel - 2015 Summary, Jan. 2015, available at: [http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/2014\\_sum.pdf](http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/2014_sum.pdf) [Hebrew]

<sup>28</sup> Human Rights Watch report, September 2014: [http://www.hrw.org/sites/default/files/reports/israel0914\\_ForUpload\\_1.pdf](http://www.hrw.org/sites/default/files/reports/israel0914_ForUpload_1.pdf)

<sup>29</sup> See complaint filed by REDRESS in 2013 to the African Commission on Human Rights against the Sudanese government on behalf of Magdy Moustafa El-Baghdady. The plaintiff claims he was imprisoned and tortured in Sudan, after authorities suspected him of being Jewish and spying on behalf of Israel and Britain. [www.redress.org/downloads/casework/redress-magdy-communication-25-October-2013.pdf](http://www.redress.org/downloads/casework/redress-magdy-communication-25-October-2013.pdf)

<sup>30</sup> Amnesty International report on arrests and torture of activists in Sudan, June 26, 2014: <http://www.amnesty.org/en/for-media/press-releases/sudan-end-arbitrary-detention-activists-and-investigate-torture-allegations>

prohibits torture and other cruel treatment.<sup>31</sup> In its rulings, the Court commented that the human rights situation in Sudan is worrisome, especially with regard to political dissidents. The Court also argued that in light of the Sudanese authorities' suspicion towards Darfuris who have left Sudan, there was reasonable concern that one of the plaintiffs, an asylum seeker from Darfur, "would attract negative attention from the authorities due to the years he spent outside the country."

According to testimonies gathered for this report, the authorities in Sudan use people who were in Israel in order to identify the "activists" among those arriving. These are then detained by the security forces as soon as they arrive at the airport in Khartoum. Some are released after a few days but are required to report their place of residence, and their movement is limited. Others are detained and tortured over weeks or months in prison or other facilities belonging to the Sudanese security forces. After being released, they are subject to heavy restrictions, such as having their passports confiscated, being forbidden to leave the city, and repeated arrests by security forces.

Eight Sudanese nationals testified before the authors of the present report about the persecution they experienced after "choosing" to leave to Sudan. Most of them left Israel during the peak of departures, in the first quarter of 2014, five of them after being summoned to Holot. Upon their return, seven were imprisoned in Sudan with no due judicial process. Six of those imprisoned were tortured in prison. All seven were interrogated about their activities in Israel, asked for names of activists in the Sudanese community in Israel and about Sudanese opposition groups active in Israel. Some were accused of spying for Israel.<sup>32</sup> A Sudanese national who left Israel and reached Sudan by way of Egypt testified that he was forced to flee Sudan after it was discovered he had stayed in Israel. After escaping the country, his father was detained and tortured by Sudanese authorities. All the asylum seekers who were imprisoned in Sudan testified that they were exposed to persecution, threats, and police interrogations after being released from prison. All recount that their property, including passports, phones, portable computers, and any money they held, was confiscated. Three said they are now trying to escape Sudan again. One succeeded in escaping to Jordan with his family, and another fled to France.

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<sup>31</sup> Rulings of the European Court of Human Rights, given in January 2015. Case number 80086/13: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-150294#{"itemid":\["001-150294"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-150294#{); Case number 18039/11: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-150302#{"itemid":\["001-150302"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-150302#{)

<sup>32</sup> Accusations such as these were also reported by Sudanese media. According to Khartoum-based newspaper Al-Intibaha, Sudanese security forces detained a person who was allegedly spying for Israel: "In Sudan they have been following Israel's espionage activity for a long time, especially among Sudanese nationals who escaped to Israel and returned to the area." The item was also featured in Israeli media: "Report in Sudan: Security forces arrested a man at the center of an Israeli spy network," Nana10 News, March 23, 2014, <http://news.nana10.co.il/Article/?ArticleID=1045912>.

Another Sudanese man testified that a relative of his disappeared after arriving in Khartoum from Israel, and a woman testified that her husband was imprisoned upon returning from Israel. One of the asylum seekers recalled meeting some 70 other detainees in prison who had also returned from Israel to Sudan. Another Sudanese man recounted witnessing the arrest of 20 other asylum seekers who flew from Israel to Sudan with him. Another asylum seeker recalled six Sudanese nationals imprisoned together with him after returning from Israel: Three opposition activists, two activists in community organizations in Israel, and one with no political background. According to testimonies, at least fourteen asylum seekers who returned from Israel died in Sudanese prisons, and two were assaulted in Darfur, after their past in Israel was publicly revealed. This information could not be verified.

Adil, an asylum seeker from Sudan, left Israel in March 2014 after being summoned to Holot:

**"When I returned to Sudan, they caught me and put me in prison for six months. They beat me, cursed at me, humiliated me. They constantly accused me of spying for Israel. They said I work for SLM [Sudan Liberation Movement, a Sudanese opposition group] and asked what the Israelis are doing with SLM. They showed me pictures of me in Israel. They said they would kill me. After six months in prison, they released me on the condition that I would not leave Khartoum. They said if there was any politics or meetings, I would be held responsible. That I may not talk to anybody about what happened in prison, what I was told or what I was asked. They took my passports and my wife's passports so we could not leave Sudan. Every two or three days they call and ask me to come to the police station. I come, wait there all day, and at night they send me off. Sometimes they come to my home all of a sudden, beating people there and looking for me. I am very, very afraid now. I am in a very dangerous situation. I want to escape Sudan to save my family, but I have no passport."** <sup>33</sup>

Idris, an asylum seeker from Sudan, left Israel in April 2014 after being summoned to Holot:

**"When I got to the airport in Sudan, they took me to an NISS facility in Bahri. I was there for a week. They took my phone and passport. They asked me if I had an apartment in Sudan, how much money I had, and where I got the money for an apartment. Twenty-something days later**

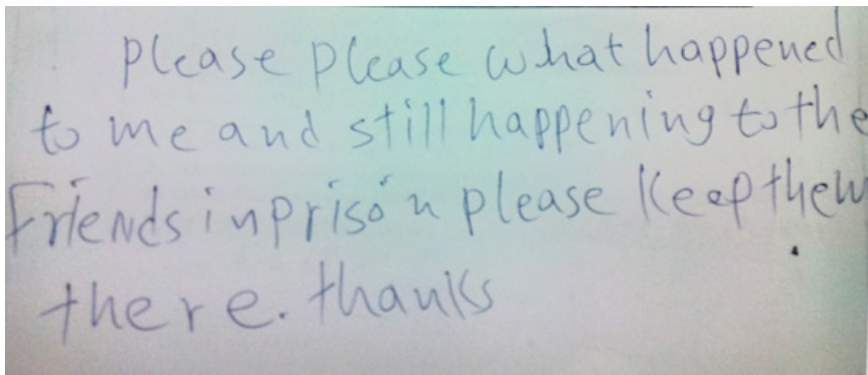
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<sup>33</sup> Interview held in December 2014.

they came to my home and put me back in Bahri for a month. They kicked and punched me, beat me a lot with a plastic pipe. They asked me what I had done in Israel and why I had been there for so long. They asked me what I knew about SLM and who worked for SLM in Israel. Now I am afraid they will come again. They keep calling and telling me to come there, all of the time. They started coming home to me. They come to me at work, they interrogate my mother. I am very afraid. I regret leaving, but between Holot and Sudan there is no good decision. Holot is hard, but after what is happening in Sudan I would have stayed in Holot. I want to leave Sudan but the passport I was given in Israel was taken away in Sudan.”<sup>34</sup>

Many of the Sudanese nationals in Israel, especially those involved in social or political activity, are aware of the situation and afraid of returning to Sudan. Zacharia, for example, testified that:

“People who went back told me not to return to Sudan. That my name and the names of others show up on lists there, and that it would be dangerous for us to return.”<sup>35</sup>



In the Photo: Part of a plea written by one of the genocide survivors from Darfur who "voluntarily" left to Uganda and begs the human rights organizations: "Please keep them [other refugees] there"

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<sup>34</sup> Interviews held in September and December 2014.

<sup>35</sup> Interview held in January 2015.

## “Voluntary Return” to Eritrea

### Eritrea and Eritrean asylum seekers: Current situation

The Israeli Supreme Court has described Eritrea as a country in which consistent and extensive human rights abuses occur, including “executions without trial; a shoot-to-kill policy against those who try to leave the country; citizens disappearing and being arrested without their families being informed; arbitrary arrests and imprisonment; extensive use of physical and psychological torture in interrogations by police, military, and security forces; inhumane conditions of imprisonment; compulsory military service for long and indefinite periods, in which cruel punishments are used, even leading to suicide; disrespect for civil rights...”<sup>36</sup>

As of December 2013, some 308,000 Eritreans are registered as asylum around the world.<sup>37</sup> The vast majority have been recognized as refugees. Eritrean refugee recognition rates worldwide stand at 84.3 percent.<sup>38</sup> Eritrean refugee recognition rates in Israel stand at 0.16 percent. Some 2,048 Eritreans in Israel managed to file asylum applications last year (during which the Immigration Authority finally began accepting asylum applications from Eritrean asylum seekers outside prison.) To date, only four Eritrean refugees have been recognized in Israel.<sup>39</sup>

### Eritrean asylum seekers in Israel and “voluntary Return”

At the end of December 2014, there were 33,999 Eritrean asylum seekers residing in Israel; some 1,691 Eritreans left the country during 2014.<sup>40</sup> The Population and Immigration Authority has not yet revealed how many of them left to Eritrea and how many left to Rwanda, Uganda, or Ethiopia. Immigration Authority data indicates that by the end of August 2014 69 Eritrean nationals had left after being sent to the Holot facility, and 361 additional Eritreans left Israel after receiving a

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<sup>36</sup> From HCJ 7146/12 Adam et al. v. the Knesset et al., Ruling dated September 16, 2013, Justice Edna Arbel, para. 6. <http://www.elyon1.court.gov.il/files/12/460/071/b24/12071460.b24.htm> [Hebrew]

<sup>37</sup> According to the UNHCR report summarizing 2013: <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=5399a14f9&query=Statistics%202013>

<sup>38</sup> In the second half of 2014, refugee recognition rates for Eritreans stood at 70 per cent, and an additional 14.3 per cent received complementary protection. The UNHCR statistical report: <http://www.unhcr.org/statistics/mid2014stats.zip>

<sup>39</sup> According to the State’s response to the HCJ on February 16, 2015. <http://www.acri.org.il/he/wp-content/uploads/2015/02/hit8665meshivim2-5-0215.pdf> [Hebrew]

<sup>40</sup> According to Immigration Authority, Foreigners in Israel - 2015 Summary, January 2015: [http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/2014\\_sum.pdf](http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/2014_sum.pdf) [Hebrew]

summons to Holot.<sup>41</sup> Human rights organizations have not managed to establish contact with any asylum seekers who left Israel in order to "voluntarily" return to Eritrea over the past two years. Despite all efforts, it is unclear how many of them returned to their homeland and what became of them.

Many Eritreans who gave in to the pressures to "voluntarily leave" preferred to leave to Uganda or Rwanda, despite knowing nobody in these countries. Even more than they fear ending up in an unfamiliar African country, Eritreans who escaped forced military service in their country are afraid of returning there before the despotic regime of Isaias Afwerki is replaced. As Gabriel, an Eritrean asylum seeker, explains:

***It's clear we cannot go back to Eritrea. They would put me back in the "prison, underground, which I barely managed to escape from. I don't know anybody in Rwanda, but they won't send me to prison there. I am afraid to go to an unknown place, but even more frightening is the new law, which sends me to Holot prison forever."***<sup>42</sup>

The Eritrean asylum seekers who leave Israel do so for a number of reasons: Because they do not receive refugee status in Israel, because they are summoned to the Holot facility, or because of the difficulties created by the authorities by not issuing conditional release permits which makes them vulnerable to arrest, or imposing economic sanctions against their employers. The high recognition rates of Eritrean refugees in other countries speak to the fate of those who left the country without permission and dared to return, or were deported back there.<sup>43</sup>

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<sup>41</sup> Figures taken from the letter of Mr. Motti Berkovich, Head of the Coordination and Monitoring Division at the Enforcement and Foreigners Administration of the Immigration Authority's Legal Bureau, "Current data regarding the Holot detention center", 31 August 2014.

<sup>42</sup> Interview held in March 2014.

<sup>43</sup> UNHCR Guidelines list arrest, torture, and forced labor imposed upon those who have left Eritrea without permission. A series of rulings from all over the world strengthens the argument that leaving the country under such conditions renders those leaving eligible for refugee status according to the UN Refugee Convention: UN High Commissioner for Refugees, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, HCR/EG/ERT/11/01, p. 16-17.  
 In Canada: Canada (Attorney General) v. Ward [1993] 2 S.C.R. 689, 747.  
 In the USA: A77-954-387, United States Court of Appeals for the Ninth Circuit, 21 April 2005. Tesfamichael v. Gonzales 92 F. 3d 167, 177 (2005). Rodriguez-Roman V. INS 98 F.3d 416, 430 (9th Cir. 1996) . Aguilera-Cota v. INS, 914 F.2d 1375 (1990).  
 In England: IN (Draft Evaders - Evidence of Risk) Eritrea v. Secretary of State for the Home Department, CG [2005]UKIAT 00106, United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, 24 May 2005, available at: <http://bit.ly/1Nl0Ahh> MA (Draft Evaders - Illegal Departures - Risk) Eritrea v. Secretary of State for the Home Department, CG [2007] UKAIT 00059, United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, 26 June 2007, available at: <http://bit.ly/1Nl2CxZ> MO (illegal exit - risk on return) Eritrea v. Secretary of State for the Home Department, CG [2011] UKUT 00190 (IAC) , United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 27 May 2011, available at: <http://bit.ly/1KKcZS> Ukashu Nuru, aka Ukasha Nuru v. Alberto R. Gonzales, Attorney General, 03-71391; **In Germany:** Frankfurt am Main Administrative Court of 12 Aug. 2013- 8 K 2202/13.F.A **In New Zealand:** Refugee Appeal No. 75668, No. 75668, New Zealand: Refugee Status Appeals Authority, 25 May 2006, available at: <http://bit.ly/1b2JmtH>  
 In Australia: RRT Case No. 0806040, [2008] RRTA 431, Australia: Refugee Review Tribunal, 20 November 2008, available at: <http://www.refworld.org/docid/498c49aa2.html>  
 In Switzerland: Administrative Federal Court, Division IV, D-4876/2007 (29 September 2010) found at: <http://www.bvger.ch/publiw/pub/cache.js?displayName=D-4876/2007&decisionDate=2010-09-29>

## 2

# Departure to third countries

**"When I said I want to go back they only asked me where I want to go. That's it. They gave me no information. They gave my friend no explanation either. I signed a document in Tigrinya stating 'I want to go to Rwanda.' I said I did not want to write that, I am leaving only because I cannot stay. They told me: 'You have to.' They put us in a chokehold there. You do everything without emotion. I said it was not my wish. My wish is to get what I deserve in Israel. I am a refugee. But they said I have to, and I signed."**

Dawit, an asylum seeker from Eritrea. <sup>44</sup>

**"Holot is the only reason I'm leaving. I am very afraid of Uganda. I do not know what awaits me there."**

Haile, an asylum seeker from Eritrea. <sup>45</sup>

In March 2013, during the appeal proceedings against the third amendment to the Anti-Infiltration Law, the State's representative announced that Israel had reached an arrangement with a third country for the purpose of transferring asylum seekers there.<sup>46</sup> One year later, in March 2014, then-Minister of the Interior Gideon Sa'ar announced that Israel had agreements with "third countries," and that "infiltrators" had begun leaving to these countries in small numbers.<sup>47</sup> The State's January 2015 response to the appeal against the last amendment to the Anti-Infiltration Law noted that the arrangements were "still standing" and being implemented, and that 1,093 "infiltrators" had left Israel as part of these arrangements, "compared to 112 who had left before March 25, 2014."<sup>48</sup> The State refused to provide details about the agreements, such as the status to be given to asylum seekers who go to those third countries, what protection they would

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<sup>44</sup> Interview held in December 2014.

<sup>45</sup> Interview held in June 2014.

<sup>46</sup> "Israel reaches deal with third state willing to absorb Eritrean migrants," "Ha'aretz," June 2, 2013. <http://www.haaretz.com/news/national/premium-1.527299>

<sup>47</sup> "Israel confirms: Asylum seekers secretly spirited away to third countries," "Ha'aretz," March 4, 2014. <http://www.haaretz.com/news/national/premium-1.577944>

<sup>48</sup> Section 45 of the State's response dated January 27, 2015, to HCJ Desta et al. v. the Knesset et al.: [www.acri.org.il/he/wp-content/uploads/2015/01/hit8665meshivim2-5-0115.pdf](http://www.acri.org.il/he/wp-content/uploads/2015/01/hit8665meshivim2-5-0115.pdf) [Hebrew]

receive there, and what guarantees the State had received for their safety there.

According to the UNHCR Handbook agreements for transferring asylum seekers between countries must be made public and subject to judicial review in order to ensure that the rights of deported persons are maintained according to conventions in the third country as well. Moreover, the deporting state must continue to monitor the fulfillment of these conditions in the third country after deportation.<sup>49</sup> The State of Israel does not meet these conditions, as detailed in the present report, and no independent body, including the UNHCR, has been allowed to examine the details of the agreements. Over the years, State authorities have sweepingly refused to reveal the content of these agreements, including the names of the third countries. Most of the details known thus far were revealed due to media pressure<sup>50</sup> and as part of the appeals against the amendments to the Anti-Infiltration Law.<sup>51</sup> Uganda and Rwanda, it should be noted, have never confirmed their part in these transfer agreements.<sup>52</sup>

Asylum seekers sent to Uganda and Rwanda with Israeli travel documents are not guaranteed legal status there. They receive the Israeli travel documents, valid for three months, at Ben Gurion International Airport, along with a confirmation of their visit. By all accounts, the Israeli travel documents are taken from deported asylum seekers as soon as they arrive at Kigali, Rwanda, or Entebbe, Uganda, by local representatives coordinated by the Israeli Immigration Authority. The fees for two nights' stay at a local hotel in Uganda are paid for by the State of Israel. After that, the asylum seekers are asked to leave, with no identification documents and no possibility of proving where they have come from. Asylum seekers who arrived in Rwanda recount questionable practices by the representatives receiving them at the airport: They were allegedly required to pay 100 to 150 dollars a night for the two nights at a local hotel, a sum large enough to cover a month's stay at such an establishment.

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<sup>49</sup> According to the UNHCR guidelines on this matter, May 2013: [www.refworld.org/pdfid/51af82794.pdf](http://www.refworld.org/pdfid/51af82794.pdf)

<sup>50</sup> Following a query by Ha'aretz, it was cleared for release that Uganda is one of the third countries:

"Gag order lifted: Uganda will take in thousands of Israel's African migrants," "Ha'aretz,"

August 29, 2013.

<http://www.haaretz.co.il/news/education/1.2110085> [Hebrew] / <http://www.haaretz.com/news/national/premium-1.544269>

<sup>51</sup> Appeal 1180-14 Sadik al-Sadik Ahmad Osman v. Ministry of the Interior – Population and Immigration Authority: [hotline.org.il/wp-content/uploads/%D7%A4%D7%A8%D7%95%D7%98%D7%95%D7%A7%D7%95%D7%9C-%D7%A1%D7%90%D7%93%D7%99%D7%A7-300614.pdf](http://hotline.org.il/wp-content/uploads/%D7%A4%D7%A8%D7%95%D7%98%D7%95%D7%A7%D7%95%D7%9C-%D7%A1%D7%90%D7%93%D7%99%D7%A7-300614.pdf) [Hebrew]

<sup>52</sup> See for instance: "Uganda denies deal with Israel to accept African migrants," "Ha'aretz," August 31, 2013.

<http://www.haaretz.co.il/news/education/1.2110919> [Hebrew] / <http://www.haaretz.com/news/diplomacy-defense/premium-1.544575>





In the photo: A standard Israeli travel document, valid for three months, given to the asylum seekers in Ben Gurion Airport and taken away from them at the airports in Rwanda and Uganda by the local representative of Israel there.



In the photo: A receipt for two nights and breakfasts in the "New Madagascar" Hotel in Kampala, given to asylum seekers who leave to Uganda.

After the first two days, the asylum seekers remain in those countries illegally. They are subject to arrest and deportation to their countries of origin, to which – Israel's official position agrees – they may not be deported. Even if they are not arrested or deported, they lack any legal status or rights, making their lives very difficult in those countries. Therefore, even those who are not arrested or deported leave these countries and depart on a new journey, with the hope of finding protection elsewhere. Israel therefore creates a phenomenon known as "refugees in orbit".<sup>53</sup> The State does not directly deport the asylum seekers to their

<sup>53</sup> Paragraphs 20-21 of the UNHCR guidelines from December 21, 2004, criticize the phenomenon of "refugees in orbit", clarifying the conditions in which it is permissible to transfer asylum seekers to a third country: [www.refworld.org/pdfid/4551c0374.pdf](http://www.refworld.org/pdfid/4551c0374.pdf)

In May 2013, the UNHCR issued detailed guidelines as to the transfer to third countries, and clarified the safeguards required to realize these transfers:

"The transfer arrangement needs to guarantee that each asylum-seeker: will be individually assessed as to the appropriateness of the transfer, subject to procedural safeguards, prior to transfer. Pre-transfer assessments are particularly important for vulnerable groups, including unaccompanied and separated children. The best interest of the child must be a primary consideration; will be admitted to the proposed receiving State; will be protected against refoulement; will have access to fair and efficient procedures for the determination of refugee status and/or other forms of international protection; will be treated in accordance with accepted international standards (for example, appropriate reception arrangements; access to health, education and basic services; safeguards against arbitrary detention; persons with specific needs are identified and assisted); and if recognized as being in need of international protection, will be able to enjoy asylum and/or access a durable solution. Where these guarantees cannot be agreed to or met, then transfer would not be appropriate".

Available at: <http://www.refworld.org/pdfid/51af82794.pdf>

countries of origin, but sends them to a place in which they are not safe, forcing them to continue wandering in search of the protection they need.

Not one of the asylum seekers who left for Uganda or Rwanda and was interviewed for this report was asked to leave contact details with Israeli authorities or receiving authorities, and no follow-up conversations were held with them after their departure. Therefore, Israeli authorities have no practical possibility of examining how they were received at their destination, if they were arrested for not having documentation of their identity and status, or if their rights or safety had been injured in any way. The State's response to the HCJ indicates that from now on, an asylum seeker entering Israel who refuses to leave to a third country will be detained at Saharonim prison indefinitely, as someone refusing to return to their country.<sup>54</sup>

## Departure to Uganda

The Government of Uganda has signed the Refugee Convention, and Ugandan law provides protection to refugees. In September 2013, the UNHCR registered 234,196 asylum seekers and refugees in Uganda, including 152,912 new refugees who arrived during that year.<sup>55</sup> Nonetheless, the U.S. State Department's latest human rights report indicates that human rights violations are widespread in Uganda, including extra-judiciary killings, torture of suspects and detainees, limitations on civil liberties such as the right to protest, freedom of expression, and freedom of assembly, as well as violence against minorities. The report also lists harsh conditions of detention, arbitrary arrest for political reasons, extended administrative detention, and imprisonment in isolation.<sup>56</sup>

When leaving Israel, asylum seekers set to fly to Uganda receive a letter promising them an entry permit. The letter is signed with the responsible clerks' first names only. Upon landing in Uganda, the asylum seekers arriving from Israel have to hand in their transit papers and no other documents are handed out in their stead. In our interviews, two of the asylum seekers who went to Uganda recounted that they were arrested upon arrival. Taher, an asylum seeker from Darfur, testified:

**"When we reached the airport in Uganda they took my travel documents.**

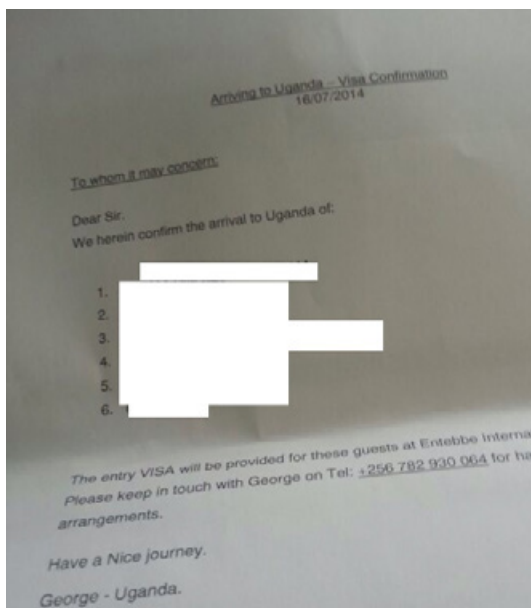
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<sup>54</sup> From the State's response on January 27, 2015, to HCJ 8665/14 Desta et al. v. the Knesset et al., section 123: [www.acri.org.il/he/wp-content/uploads/2015/01/hit8665meshivim2-5-0115.pdf](http://www.acri.org.il/he/wp-content/uploads/2015/01/hit8665meshivim2-5-0115.pdf) [Hebrew]

<sup>55</sup> Ibid, p. 20.

<sup>56</sup> U.S. State Department Human Rights Report, 2013: [www.state.gov/documents/organization/220359.pdf](http://www.state.gov/documents/organization/220359.pdf)

**I was arrested and placed in prison for two days because I had no identification.**<sup>57</sup>



In the photo: Entry Visa to Uganda, signed by "George - Republic of Uganda". There was no answer when calls were made to George's phone number and the confirmation is taken from asylum seekers when they arrive at Entebbe Airport, together with the other documents.

Asylum seekers coming to Uganda can contact the Ugandan Prime Minister's Office, charged with caring for asylum seekers, to request refugee status and receive a three-month residency permit, serving also as an identifying document. However, reports indicate that it is hard to complete this process without entry permits to Uganda. None of those interviewed for the present report managed to complete the process, although some have been in the country for about a year. The asylum seekers reported economic hardships, and most of them testified that they still did not feel safe in Uganda. Leaving Uganda presents difficulties as well. One of the interviewees explained that leaving Uganda is not always possible:

**Someone tried to cross the border to South Sudan and they took all of "his things, his clothes, and sent him back to Kampala. Six friends went to the border. They took their suitcases and put them in prison for 15 days. Three were told to go back, three moved to South Sudan."**<sup>58</sup>

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<sup>57</sup> Interview held in August 2014.

<sup>58</sup> Interview held in November 2014.

## Departure to Rwanda

The Government of Rwanda has signed the Refugee Convention. Nonetheless, according to the latest U.S. State Department's Human Rights Report, Rwanda is a country in which there were "arbitrary or unlawful killings [...] disappearances, torture, harsh conditions in prisons and detention centers, arbitrary arrest, prolonged pretrial detention" and "restricted freedoms of speech, press, assembly, and association."<sup>59</sup>

The authors of the present report managed to interview only a few asylum seekers in Rwanda. Those who testified about leaving for Rwanda went on to other destinations immediately. The authors of the present report could not locate a single asylum seeker who found protection and stayed in Rwanda for more than a few days. Other interviewees, when asked about it, clarified that staying in Rwanda was not an option. Dawit, an Eritrean asylum seeker, left Rwanda upon arriving there in June 2014:

**"After landing in Rwanda we came to a hotel. For two days you cannot leave the hotel. They took our travel documents, and I was startled and didn't understand. There's nothing to do in Rwanda, you have no passport so you can't walk around. After two days you have to go to the Ministry of the Interior in Rwanda or go somewhere else, leave. I did not know anything about Rwanda, and I wanted to go somewhere I knew."**<sup>60</sup>

The asylum seekers who left Israel for Rwanda in the past few months received a letter upon leaving, stating that in Rwanda they would receive a tourist visa for 30 days, prohibiting them from working. Mikele, an asylum seeker from Eritrea, who submitted an asylum application in Israel but never received an answer, got such a letter upon leaving:

**"At the airport, they gave me a letter of transit with a picture and a document that said I have a visa for vacationing. At the airport in Rwanda three people from Rwandan Immigration came, took both of the documents I got in Israel, and gave me nothing. Nobody from Israeli Immigration came to check up on me. At 2 a.m. they took us to a room, locked us in there, and left. For fourteen hours we talked to nobody. At 4 p.m., a man from the Immigration came and told us: 'Give me 250 dollars each, and I will take you to Uganda. I know they gave you money in Israel.' We asked him to give back our documents, but he said: 'You have to go to**

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<sup>59</sup> U.S. State Department Human Rights Report, 2013: [www.state.gov/documents/organization/220359.pdf](http://www.state.gov/documents/organization/220359.pdf)

<sup>60</sup> Interview held in December 2014

Uganda.' In Uganda we have no family, nothing. I went to Juba because I didn't know where to go. I feel safe here because I am not in prison, but I have nothing to do here, no way to work, no way to eat. Even though Holot is rough, I don't recommend that people come here because there is no refugee camp. I don't know where I will go now."<sup>61</sup>



In the photo: Entry Visa to Rwanda, valid for 30 days without permission to work. This confirmation is taken from the asylum seekers at Kigali Airport together with the other identification papers

The testimonies of asylum seekers in Uganda who left Israel for Rwanda indicate that Rwandan immigration authorities are strict about identifying documents, and as asylum seekers coming from Israel without identifying documents they may be arrested by local authorities. Tesfay, an asylum seeker from Eritrea, left for Rwanda in March 2014 after finding out that he met the criteria for being summoned to Holot:

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<sup>61</sup> Interview held in January 2015.

**"When they told me at the Ministry of the Interior that I could go to Rwanda, I thought that I would be able to stay there. I knew nothing about Rwanda, but I knew I couldn't go back to Eritrea. I understood from them that I would have freedom in Rwanda. But in Rwanda they told me I have to leave to another country quickly, because without papers I would be arrested. They offered me to pay them quickly to go to Uganda before I was arrested."** <sup>62</sup>

Dawit, an asylum seeker from Eritrea, was in Israel for seven years. The asylum request he filed was never answered. He left in January 2014 for Rwanda, after being summoned to Holot:

**"I knew nothing about Rwanda, and wanted to go somewhere I knew. Two days after I arrived I went to Uganda with a smuggler. At 5 a.m. they caught us and took us to prison because we had no papers. We were in prison for a few hours. They asked us where we had come from, if we were Jihad or Shabab. We said we had come from Israel, that we were deported to Rwanda and had walked for six hours, on foot. We paid 1,200 dollars and they let us out of prison. We were afraid, it was all illegal because we had no documents. Without documents, you are like a dog on the street."**

Dawit continued from Rwanda to Uganda, and from there to South Sudan:

**"We paid 100 dollars each and got to Juba. Every time on the way you have to pay to keep going, because we have no passport, we have nothing. At the border between South Sudan and Uganda there is a small city. We were there for two days. On the first day, friends went out, each on a different truck. They were caught at a checkpoint and arrested. Friends in prison said they had guns pulled on them. In South Sudan even on the street, if someone notices you are not from there, they pull a gun on you. People are like chickens to them. In the end I paid 4,000 dollars to free them. There was no choice and we knew nobody. Afterwards, we went to Khartoum. There's a checkpoint every 50 meters and there are guns and you have to give money."** <sup>63</sup>

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<sup>62</sup> Interview held in March 2014.

<sup>63</sup> Interview held in December 2014

The UNHCR reports that since the crisis erupted in South Sudan in December 2013, the lack of safety in that country has increased tensions between the refugee community and the local population.<sup>64</sup> According to Amnesty International, the heightened conflict has led civilians to be murdered for their ethnic origins.<sup>65</sup> Ahmad, an asylum seeker from Darfur, testifies that:

**"in South Sudan they still think of Darfurians as an enemy. There are still battles there, and if you are in that area it can be very dangerous."**<sup>66</sup>

In October 2014, an Eritrean asylum seeker who had left for Rwanda contacted the Hotline for Refugees and Migrants. He and three other asylum seekers were afraid of staying there without identifying documents, continued to Kenya, and were arrested there. The information was passed on to the UNHCR. At the time of this writing, the UNHCR has yet to succeed in locating the four in Kenyan prison.

### Irregularities surrounding the departure procedure to third countries

Aside from criticism of the very policy of transfer to third countries via a procedure that fails to provide appropriate protections to asylum seekers from Sudan and Eritrea, in some cases severe irregularities have been found surrounding the departure procedures, such that have placed the asylum seekers in danger. Ephrem, an asylum seeker from Eritrea, left Israel in July 2014:

**"I went to the Immigration Authority offices on Salame Street and said I wanted to go to Uganda. I said I have an Eritrean passport. They said it's a problem but it could be arranged, I could go to Uganda via Egypt. In Uganda I would have 19 days of vacation, a tourist visa. They said the ticket would say I have to go to Eritrea after 19 days, but I would have 19 days in Uganda to 'work it out.'"**

Ephrem flew to Egypt at night, and the next evening he was supposed to board a flight from Egypt to Uganda:

**"But the Egyptians said I could not go to Uganda because I did not have a visa for Uganda, and they would send me directly to Eritrea. There were two others with me who had Eritrean passports. The flight to**

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<sup>64</sup> According to UNHCR information: <http://www.unhcr.org/pages/4e43cb466.html>

<sup>65</sup> Amnesty International, September 2014: <http://reliefweb.int/sites/reliefweb.int/files/resources/eur050062014en.pdf>

<sup>66</sup> Interview held in November 2014.



**Uganda left without us. A guy with us knew someone at the Ministry of the Interior. He called him and said the Egyptians wanted to send us to Eritrea. We even asked to go back to Israel. The guy from the Ministry said he would take care of it."**

The next night, Ephrem and the two other asylum seekers were placed on a flight to Eritrea. Forced return to Eritrea, as mentioned above, constitutes a severe breach of the principle of non-refoulement.

Sadik al-Sadik (his real name), an asylum seeker from Darfur, left Israel to Ethiopia from the Holot detention facility in April 2014. He was forced, against his will, to return from Ethiopia to Israel. al-Sadik testified as follows to the Court of Appeals:

**"I was summoned to Holot and wanted to leave Israel to a place that accepts my liberty. I knew that they were sending people to Uganda and Rwanda and I didn't care where, anywhere but Sudan. They had my passport. I told them, 'My passport has been with you since 2009.' They said, 'if you want to fly, it doesn't matter,' and gave me this passport, which is not mine."**<sup>67</sup>



In the photo: A post with al-Sadik's story on the Facebook page "They are not refugees", published several months before he left Israel. This publication clarifies how unreasonable the Immigration Authority claim is that al-Sadik requested to return to Sudan.

<sup>67</sup> Minutes of proceedings at the Court of Appeals, Appeal (TA) 1180-14 Sadik Alsadik Ahmad Osman v. Ministry of the Interior, June 30, 2014.



After he asked to leave to any country that would not imprison him, the Voluntary Returns Unit gave al-Sadik a passport belonging to another Sudanese asylum seeker, and a flight ticket to Ethiopia. But in Addis Abeba al-Sadik was not allowed to leave the airport, and he was told he had to continue directly to Sudan. Al-Sadik, a survivor of the genocide in Darfur, who testified about his experiences of persecution in Darfur during his time in Israel, refused to go on to Sudan, where he knew his life would be in danger. Only after several long days at the Addis Abeba airport, and thanks to an intervention by human rights organizations in Israel, was al-Sadik's deportation to Khartoum prevented. He was returned to Israel against his will, and was transferred to the Holot facility. During the proceedings at the Court of Appeals, Unit Director Mr. Gideon Cohen said: "Of course we do not give anybody passports. That claim is simply incorrect." The presiding judge, Justice Dotan Bergman, chose to believe the Unit Director and rejected al-Sadik's petition to be released from Holot. Three months later, Ofer Shmueli, a senior Voluntary Returns Unit employee, was accused of accepting bribery for forging a passport for another survivor of the genocide in Darfur.

During proceedings at the High Court of Justice in February 2015, the Justices spoke to these extreme circumstances and the "bleak picture" arising in this case: "Such a situation, where a person asks for asylum and gets sent to Khartoum, is a situation I have never seen."<sup>68</sup> In addition, the Justices mentioned the criticism the Court of Appeals had expressed about the conduct surrounding the "Voluntary Return" procedure in this case. In light of the Justices' recommendation in the proceedings, the Ministry of the Interior conceded, freeing al-Sadik from Holot, where he had been held for nine months.

In conclusion, the dozens of testimonies and documents assembled by the authors of the present report indicate that even if there are indeed agreements between the State of Israel and the States of Uganda and Rwanda, these agreements do not provide departing asylum seekers with the protection they are entitled to under international law. The conduct of the authorities in Israel and the forgery of travel documents by at least one Authority employee indicate how enthusiastic they are to remove as many asylum seekers as possible from Israel, beyond all restraint and at any price. The reports of those who left for Rwanda and Uganda clarify that they are doomed to continue the perilous journey in search of a safe haven, which the State of Israel has failed to provide them.

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<sup>68</sup> Minutes of proceedings in HCJ 8150/14 Sadik al-Sadik Ahmad Osman v. Population and Immigration Authority, February 23, 2015: <http://hotline.org.il/wp-content/uploads/2015/02/SadiqProtocol.pdf> [Hebrew]

### 3

## The Refugee's Journey Goes On - Destination: Europe

**"Many people leaving Israel try to get to Libya and from there to Europe. There are some who make it to Europe. But there are some who drown at sea."**

(Tesfalem, an asylum seeker from Eritrea in Israel)

**"I knew the journey would be hard, that I could die there. But I had no choice. I had imagined all the bad things that could happen. I knew I was risking my life by leaving Israel."**

(Ephrem, an Eritrean asylum seeker, left Israel as part of the "Voluntarily Return" procedure and reached Sweden)

Many of the asylum seekers who leave Israel as part of the "Voluntary Return" procedure, especially those sent to third countries, continue from that destination on a new journey in search of refuge. Without status and without protection in the countries they are sent to, they embark again on a long and dangerous road, wandering on, looking for a place where they would be safe. Because many remain with no documentation at all, whether because it was taken from them upon arrival in the third countries (see Chapter 2) or because their passport was confiscated in Sudan (see Chapter 1), they are vulnerable to arbitrary arrests and blackmail, subjected to violence at the hands of smugglers, and risk drowning in the Mediterranean Sea.

According to conversations with many asylum seekers, dozens of asylum seekers who were forced to leave Israel have tried to make their way to Europe. Many take a route that goes from Rwanda or Uganda to South Sudan, from there to Sudan and Libya, and from there to the European Union, through the Mediterranean. According to research conducted by the authors, some of those imprisoned upon returning to Sudan have already left, or plan to escape again. Adil, an asylum seeker from Darfur who left Israel in March 2014 and was tortured in prison in Sudan said:

**"I want to escape Sudan but I have no passport, so maybe we will escape to South Sudan and then to Kampala, to save my family."** <sup>69</sup>

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<sup>69</sup> Interview held in December 2014

## Jordan

Musa, an asylum seeker from Darfur, left Israel for Sudan in March 2014 after being summoned to Holot. In Sudan he was imprisoned for ten days in isolation, beaten, and interrogated about his life in Israel. All of his property, including his passport, was confiscated. After being freed, he escaped again and is now in Jordan:

**"In Khartoum I paid a lot of money and left with my wife and children to Jordan. I applied for asylum at the UNHCR in Jordan, and got a card. I have an interview in one year. But the police ignores the UNHCR card, so if police come they can put me in prison. In Jordan there are Sudanese security forces too. They come at night to the areas where Darfurians live and beat people."<sup>70</sup>**

Musa testified that at least 50–60 asylum seekers like him live in Jordan, people who lived in Israel and left "voluntarily."

## Sudan

Some of those who left for Uganda or Rwanda end up in Sudan. Basher, an asylum seeker from Sudan, was imprisoned in Israel after being caught with an expired conditional release permit, and left from Saharonim prison to Uganda in March 2014:

**"I decided to leave because I hated being in prison. I had no passport, and Immigrations said if I had no passport I could only go to Uganda. When I decided to go, Immigrations asked me if I would be alright. I told them it was a risk for me, but I couldn't stay in prison anymore. They said it was my responsibility if I go back and if something happens, but I had no other option, so I left. I didn't stay in Uganda, because I had no documents."**

Basher left Uganda to South Sudan, and from there to Sudan:

**"At the airport in Khartoum they arrested us. We said we came from South Sudan, but they said our shoes were from Israel and they knew those shoes. These were shoes we got from Immigration in Israel. At first we denied it, because we were afraid they would kill us if they knew we came**

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<sup>70</sup> Interview held in December 2014

from Israel. They took us to Kubar prison, beat us with sticks, and asked if we had come from Israel. In the end we admitted that we had. For three months I was beaten, and now I have problems with my feet because of the beatings. After they freed me I escaped to Egypt with no documents. I'm in a bad situation, I can't work because of the feet." <sup>71</sup>

## Libya

Many asylum seekers who leave Israel try to get to Europe. Some leave with the intention of trying to reach Europe to begin with, others decide to set off on the journey due to the difficulties they encounter in the countries they arrive in. On his way to Europe, Dawit continued from Sudan to Libya:

**"After five days in Sudan we got on a truck to Libya. There was a war there. People are not people. We were in Libya for two months. They put you in a big hanger with 200-300 people. They guard you with a gun. You pee only at the hours they let you. Eat once a day. We were like that for a week. First we ate one pasta (bowl) a day. At another place one pita bread for the whole day. There were pregnant women there, children, and babies. Every day you cry. You get beaten. They broke people's hands and feet. Coming into Libya, they attacked girls. You can't help, only hope they don't get diseases and don't get pregnant. There are people who came from Israel whose hands were broken there."** <sup>72</sup>

Libya is the main port of departure for people trying to reach Europe by informal routes. Because of the country's political instability, foreign nationals, especially from Africa, are all the more vulnerable to kidnapping, arbitrary arrest, and torture at the hands of government forces and smugglers. Many asylum seekers reported to Amnesty International about injuries they suffered from smugglers, including beatings and rape. <sup>73</sup>

In September 2014, Dawit set off on the naval journey towards Europe across the Mediterranean, and testifies about their manner of travel:

**"We were 300 people in a small boat. There's no air. Six hours later, the ship stopped moving. All of the people are crying. Water was filling into**

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<sup>71</sup> Interview held in January 2014.

<sup>72</sup> Interview held in December 2014

<sup>73</sup> See Amnesty International report, "Lives adrift: Refugees & migrants in peril in the central Mediterranean", September 2014:  
<http://reliefweb.int/sites/reliefweb.int/files/resources/eur050062014en.pdf>

**the ship. For four hours, everyone was taking out water. They called Italy. First a helicopter came and took pictures, then a big ship came. They put us on a big ship and took us to Sicily. We were at sea for thirty-five hours."**<sup>74</sup>

Ali, an asylum seeker from Darfur who lives in Israel, reports about a friend who drowned in the Mediterranean:

**"He said to me, 'People are in Holot, so I will go back to Sudan.' When he got to Sudan, he was put in prison. They took his things. After the police released him, he escaped. He drowned at sea, on his way to Italy. We were friends from five, six years back, I knew him in Sudan. We came together in 2011. We would talk together and walk together. He was a good guy, we were friends here, too. He was 33."**<sup>75</sup>

According to the UNHCR, 3,500 people have died of drowning, dehydration, or hypothermia in the Mediterranean in 2014, and 207,000 crossed the Mediterranean successfully, almost half of them from Eritrea and Syria.<sup>76</sup> The Italian government's rescue mission has saved 100,000 human lives in the Mediterranean Sea between October 2013 and September 2014.<sup>77</sup>

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<sup>74</sup> Interview held in December 2014

<sup>75</sup> Interview held in December 2014

<sup>76</sup> Report on the UNHCR website, December 10, 2014: <http://www.unhcr.org/5486e6b56.html>

<sup>77</sup> See Amnesty International report, "Lives adrift: Refugees & migrants in peril in the central Mediterranean", September 2014: <http://reliefweb.int/sites/reliefweb.int/files/resources/eur050062014en.pdf>

## Sweden

Dawit, who was rescued by the Italian authorities, reached Sweden in September 2014:

***"I have been in Sweden for three months. I have an [asylum] interview in May. There are nice people in Sweden. They don't run away from the black man like they do in Israel, running away from the cancer. I have a refugee card, we have a school and we learn Swedish. I have a doctor. There is no special place for refugees here, you can live anywhere."***

Ephrem, another asylum seeker from Eritrea, also left Israel as part of the "Voluntary Return" procedure and reached Sweden after a long journey.

According to testimonies collected for the present report, a few individual asylum seekers who left Israel also reached England, Germany, the Netherlands, France, and Norway. Many asylum seekers who do not reach Europe continue wandering between many countries, looking for protection.

## 4

# International standards for voluntary repatriation

According to international law, a person may not be deported to a place where they face mortal danger – whether it is their country of origin or another country. Nonetheless, an asylum seeker does have the right to relinquish the protection they are entitled to, and to return to a place where they are in danger. Because there is an inherent tension between this right and the host country's obligation, international law provides tools to help examine whether the return is indeed the result of a free and informed choice made on the basis of objective information, or a choice made under undue pressure the host country placed upon the person, pushing them to leave. According to international law, when injurious pressures are used, it is not a voluntary return but a de-facto deportation.

The non-refoulement principle dictates that a person may not be deported to a country in which their life or liberty are in danger, or where they are expected to be subjected to torture. This principle is anchored in Article 33 of the 1951 Convention relating to the Status of Refugees,<sup>78</sup> Article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>79</sup> Articles 6-7 of the 1966 International Covenant on Civil and Political Rights,<sup>80</sup> and also constitutes part of the international standard applied in Israel.<sup>81</sup>

The obligation placed upon the State by virtue of the non-refoulement principle does not amount only to avoiding direct return of asylum seekers to their country of origin. Article 33(1) of the Refugee Convention forbids any return "in any manner whatsoever," meaning the ban includes any acts on the part of the State which may result in an asylum seeker returning to his country of origin against his will.<sup>82</sup> This also includes a ban on expelling a person to a third country which does not ensure their rights according to the conventions and may return them to their country

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<sup>78</sup> The full text of the International Convention Related to the Status of Refugees (1951) can be found at the United Nations Treaty Collection at <http://www.unhcr.org/pages/49da0e466.html>

<sup>79</sup> The full text of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) can be found at the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003d679>

<sup>80</sup> The full text of the International Covenant on Civil and Political Rights (1966) can be found at the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280004bf5>  
G. T. v. Australia, Communication No. 706/1996, U.N. Doc. CCPR/C/61/D/706/1996 (1997), para. 8;  
Kindler v. Canada, Communication No. 470/1991, U.N. Doc. CCPR/C/48/D/470/1991 (1993), para. 14.

<sup>81</sup> HCJ 5190/94 Al-Tai v. Minister of Interior, IsrSC 49(3) 848, 847-48 (1994).

<sup>82</sup> James Hathaway, *The Rights of Refugees under International Law* (2005), page 318.

of origin, where they face danger. According to UNHCR guidelines, the State is required to see to asylum seekers' rights within its borders and not to expel them to a third country. At the same time, as noted above, if the State does reach an agreement with a third country to which asylum seekers are to be transferred, the agreement must be made public and subjected to judicial review, and it must ensure that the deported persons' rights under the conventions be protected in the third country. Moreover, the State must continuously monitor the fulfillment of these conditions in the third country after expulsion.<sup>83</sup>

Different courts which have examined the legality of transferring immigrants in general and asylum seekers in particular to third countries, or returning them to a country they had come through, were not satisfied with the mere existence of an agreement between the transferring country and the receiving country, and have examined the conditions in the receiving country in detail. For example, the Australian Supreme Court ruled out an agreement for transferring migrants caught at sea from Australia to Malaysia, after determining that the treatment of migrants sent to Malaysia does not meet the required standards.<sup>84</sup> Similarly, the European Court of Human Rights ruled that the transfer of migrants caught at sea from Italy to Libya according to an agreement between the two countries constituted a violation of Italy's obligations, due to the circumstances in Libya.<sup>85</sup> The European Court of Human Rights also forbade transferring asylum seekers back to Greece after they had passed through Greece on their way into other European countries, due to the collapsing asylum system in Greece, the harsh conditions in migration' detention, and migrants' inability to make a living in Greece.<sup>86</sup>

Regardless to the ban on expulsion imposed on the State, an asylum seeker has the right to waive protection in the host country and voluntarily return to their country of origin,<sup>87</sup>

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<sup>83</sup> UNHCR, Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers, May 2013

<sup>84</sup> Plaintiff M70/2011 v. Minister for Immigration and Citizenship [2011] HCA 32 (31 August, 2011).

<sup>85</sup> *Hirsi Jamaa v. Italy*, application no. 27765/09 (23 February, 2012).

<sup>86</sup> *M.S.S. v. Belgium and Greece*, application no. 30696/09 (21 January, 2011).

<sup>87</sup> Article 1(C)(4) of the International Convention relating to the Status of Refugees stipulates that the State's obligation towards a person expires when he "has voluntarily re-established himself in the country which he left or outside of which he remained owing to fear of persecution"; and from Article 6(a) of Israel's Basic Law: Human Dignity and Liberty according to which "every person is free to leave Israel." The main objective of refugee protection law is to bring about a permanent solution for their situation. The four preferred solutions are return to the country of origin when the circumstances due to which the person was imperiled has come to an end, voluntary return as detailed here, absorption in the host country, and relocation to a third country as described below. See: James Hathaway, *The Rights of Refugees under International Law* (2005), pages 913-917.



ready to bear the risk they face there.<sup>88</sup> And yet, in order to ensure that it is indeed their wish and not an improper deportation, the wish to return to the country of origin must come from an informed and free choice.<sup>89</sup>

**Informed decision:** According to UNHCR guidelines, in order for repatriation to be voluntary it must be ensured that the person made their decision on the basis of information that is full, accurate, and as objective as possible, and that they have considered the risks facing them upon return.<sup>90</sup> Israeli administrative law also obligates the Immigration Authority to collect information relevant to making this decision, and to provide it to the departing person in order to allow them to make an informed decision.<sup>91</sup>

**Free choice:** To distinguish between voluntary repatriation and prohibited deportation, the choice of the returnee must be examined as to whether it was made due to positive factors drawing one to return to their country of origin (like a wish to return to their family,) or due to negative elements in the host country which push them to leave. The Supreme Court recently spoke to this in its ruling which struck down the fourth amendment to the Anti-Infiltration Law

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<sup>88</sup> This right is derived both from every person's basic right to leave any country, and from the person's right to return to the country of their nationality, as laid out in Sections 12(2) and 12(4) of the International Covenant on Civil and Political Rights and Section 13(2) of the Universal Declaration of Human Rights.

<sup>89</sup> This interpretation, expounded in detail in the coming sections, is laid out in the UNHCR Handbook and accepted by the Red Cross, the International Organization for Migration (IOM), by the European Council on Refugees and Exiles (ECRE, an umbrella organization uniting refugee aid organizations), and more. See:

UN High Commissioner for Refugees (UNHCR), Handbook - Voluntary Repatriation: International Protection, January 1996, page 10, para. 2.3, available at: <http://www.refworld.org/docid/3ae6b3510.html>  
International Federation of Red Cross and Red Crescent Societies, Repatriation Guidelines for National Red Cross and Red Crescent Societies, 1999, page 24, available at:

<https://www.ifrc.org/Global/Publications/migration/perco/perco-repatriation-en.pdf>

International Organization for Migration: Assisted voluntary return and reintegration handbook for the North African Region, page 16, available at:

[http://publications.iom.int/bookstore/free/AVRR\\_Handbook.pdf](http://publications.iom.int/bookstore/free/AVRR_Handbook.pdf)

The European Council on Refugees and Exiles (ECRE), Position on Returns, October 2003, page 4, para. 7-8 available at: <http://www.unhcr.org/4d948adf9.pdf>.

<sup>90</sup> UN High Commissioner for Refugees (UNHCR), Handbook - Voluntary Repatriation: International Protection, January 1996, page 10, para. 2.3, available at: <http://www.refworld.org/docid/3ae6b3510.html>;  
UNHCR Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees No. 101 (LV) – 2004

<sup>91</sup> The obligations derive from the duty of fairness placed upon the Authority and from the rules of natural justice, which promise a person the right to be heard. In addition, in circumstances in which an individual's consent is required or the individual is in a position of "informational disadvantage," mechanisms are in place which treat the duty to inform as a condition for giving consent. See for example CA 7298/00 Samuel v. Hamami, Section 48 (September 4, 2007); CA 6153/97 Stendahl v. Prof. Sadeh, Rulings 56 (4) 746, 757 (2002).

as unconstitutional:

**"The question is whether a decision to leave Israel to a country where one's life and liberty are in peril is to be considered a choice made by 'free will.' [...] The litmus test for deciding this question relates to the presence – or absence – of measures pushing a person to return to a country where they face danger. Leaving the country can therefore be considered prohibited deportation (and not a departure due to 'free will') not only in cases where the State formally orders a deportation, but also when the State takes especially severe and injurious measures designed to place pressure upon a person and lead to their 'voluntarily' leaving the country. And I explain: Free choice is possible only where a sovereign person can make a conscious and informed decision out of a number of possible options, which do not place them before an impossible situation."** <sup>92</sup>

Experts in international law have insisted that when injurious pressures are employed, the repatriation is not a voluntary return, but rather de-facto deportation (known also as "constructive refolement,"), even in absence of a deportation order on behalf of the deporting State. The UN International Law Commission explicitly addressed cases where this was done under the guise of a "voluntary repatriation program."<sup>93</sup> The UNHCR has made it clear that free will is constituted only when refugees receive the protection and rights they are entitled to according to the Convention, and that when these rights are denied and they are imprisoned in order to pressure them to "voluntarily" return, their consent to return does not reflect free will.<sup>94</sup>

The Commission has addressed this matter with regards to the return of Sudanese and Eritrean nationals from Israel. In October 2012, William Tall, then the UNHCR representative in Israel, wrote: "The voluntary repatriation of asylum-seekers from Sudan is possible if it is done discreetly and under conditions that ensured the

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<sup>92</sup> HCJ 8425/13 Eitan Israeli Migration Policy et al. v. Government of Israel (September 22, 2014), sections 110-111 of Justice Fogelman's ruling.

<sup>93</sup> International Law Commission, Expulsion of Aliens: Memorandum by the Secretariat (Fifty-eighth session, 2006), Geneva, 1 May – 9 June and 3 July – 11 August 2006, UN General Assembly document A/CN.4/565, paragraph 68 (p.62). available at: [http://legal.un.org/ilc/documentation/english/a\\_cn4\\_565.pdf](http://legal.un.org/ilc/documentation/english/a_cn4_565.pdf).

<sup>94</sup> UN High Commissioner for Refugees (UNHCR), Handbook - Voluntary Repatriation: International Protection, January 1996, page 10, para. 2.3. See also: Human Rights Watch, "Make Their Lives Miserable" - Israel's Coercion of Eritrean and Sudanese Asylum Seekers to Leave Israel, September 2014, pages 39-50, available at: <http://www.hrw.org/reports/2014/09/09/make-their-lives-miserable-0>

decision to return is completely voluntary and made without duress, threats of deportation or force." Tall clarified that the return of imprisoned asylum seekers should not be seen as voluntary repatriation: "Agreement to return to Eritrea under an ultimatum of jail ... can't be considered voluntary by any criterion. It is explicitly not voluntary return."<sup>95</sup>

In Israel, the authorities' abuse of asylum seekers is wide ranging: It includes withholding residency permits, humiliation during invasive interviews, heavy psychological pressure to leave during every meeting with Immigration Authority official, and especially their imprisonment at Holot and Saharonim. These factors mean that their leaving is neither voluntary repatriation nor a free choice. In other words, Israeli authorities de-facto deport the asylum seekers to a place where their life is in danger, or to a continued journey in search of refuge.

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<sup>95</sup> "UN High Commissioner for Refugees: Israel is returning Eritreans illegally," "Ha'aretz," February 25, 2013. [www.haaretz.co.il/news/education/1.1937142](http://www.haaretz.co.il/news/education/1.1937142).

# Recommendations

1. Israel must meet its obligations under the Refugee Convention to conduct a fair asylum procedure and share the responsibility towards refugees with the other States signatory to the Convention, in the spirit of "burden sharing."

It should no longer allow the expulsion of asylum seekers to third countries without examining their asylum applications. The defects in the Israeli asylum system and the non-recognition policy for refugees are evident in the extremely low recognition rates of asylum seekers from Eritrea and Sudan, in comparison with the high global recognition rates for asylum seekers from these countries.

2. Restrictive measures for encouragement of "Voluntary Return" are to be avoided.

It should be noted in particular that a person's consent to leave Israel does not reflect free will when they are denied liberty or face danger of imprisonment.

3. Ensuring informed consent.

Information about the countries to which people are sent as part of a "voluntary return" should be collected on an ongoing basis, and those asking to leave should be given full information about conditions in that country and the dangers expected there.

4. Agreements with third countries to which deportation takes place must be made available to the public.

Only when they are public, can they be subjected to examination and judicial review as needed. In addition, **these agreements must include safeguards for the deported persons** with regard to their access to the asylum system in the third country, their rights under the Refugee Convention, and a ban on their deportation to a country in which they are in danger. Israel must ensure that these conditions be fulfilled for those deported to third countries.

5. The conduct of Voluntary Returns Unit clerks and others at the Population and Immigration Authority must be supervised to ensure that asylum seekers are not subjected to verbal pressure negating their free will, and that illegal conduct such as selling passports or recommendations about passport forgery is denounced and stopped. In addition, we recommend that the State Comptroller investigate the "Voluntary Return" procedure and the authorities' conduct in carrying it out.



**This report was published with the generous support  
of the Foundation for Migration, Population and  
Environment (PME)**