HUMAN RIGHTS WATCH

“Making Their Lives Miserable”

Israel’s Coercion of Eritrean and Sudanese Asylum Seekers to Leave Israel

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Make Their Lives Miserable

Israel's Coercion of Eritrean and Sudanese Asylum Seekers to Leave Israel

Map


Mediterranean Sea
WEST BANK
Tel Aviv
Ramallah
Jerusalem
ISRAEL
Gaza City
GAZA STRIP
Beersheva
Ktzi'ot Detention Center
Saharonim Detention Center
Holot Residency Center
JORDAN
EGYPT
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40 KM

SUMMARY AND RECOMMENDATIONS

Thousands of Eritreans and Sudanese march in Tel Aviv on December 28, 2013 in a "Strike for Freedom" protest against the Israeli authorities' indefinite detention policy and other restrictive measures aimed at encouraging them to leave the country.

Photographs by Keren Manor

IN January 2014, thousands of Eritreans and Sudanese in Israel took to the streets of Tel Aviv and Jerusalem to protest against the Israeli authorities' policy of coercing them into returning to their countries where they face a serious risk of abuse at the hands of repressive governments. Their demands to the authorities were clear: end the practice of subjecting them to unlawful indefinite detention, stop labeling them "infiltrators" instead of asylum seekers and refugees, register and fairly assess their asylum claims, and respect their right to work.

As of August 2014, their calls have fallen on deaf ears while the authorities' unlawful coercion policy is gradually achieving Israel's interior minister's aim of "encouraging the illegals to leave." By the end of June 2014, at least 6,400 Sudanese and at least 367 Eritreans had officially left Israel for their home countries, while Israel had only recognized two Eritreans, and no Sudanese, as refugees.

Israeli immigration police in Tel Aviv check the identity documents of "infiltrators" ordered to report to the Holot "Residency Center" in Israel's Negev desert, January 26, 2014. Israeli law allows the authorities to arrest and detain anyone failing to report.

The fate of Eritreans returning from Israel is unknown, although Human Rights Watch has documented how the Eritrean authorities abuse some Eritreans returning from other countries. Seven Sudanese returning from Israel told Human Rights Watch they were detained and interrogated in Sudan's capital, Khartoum, with three held for long periods during which time one was tortured, a second was put in solitary confinement, and a third was charged with treason for visiting Israel. Others were released after short periods.

Sudanese law makes it a crime, punishable by up to ten years in prison, for Sudanese citizens to visit Israel, which creates what is called a sur place refugee claim in which the well-founded fear of being persecuted arises as a consequence of events that happened or activities the asylum seeker engaged in after they left their country of origin. Human Rights Watch believes that Israel should recognize all Sudanese as refugees on a prima facie basis—that is based on their nationality—because they risk being persecuted for having been to Israel.

Because of credible persecution fears relating to punishment for evading indefinite military service in Eritrea, 83 percent of Eritrean asylum seekers in receiving countries such as Italy, Norway, Switzerland and the United Kingdom were granted some form of protection in 2013. Given that Eritrean asylum seekers in Israel are fleeing

Eritreans and Sudanese wait for an Israeli immigration authority bus to take them from Tel Aviv to the Holot "Residency Center" in Israel's Negev desert, January 29, 2014, where they face unlawful indefinite detention.

the same country for the same reasons as Eritrean asylum seekers in other countries, it would be reasonable to expect a comparable asylum approval rate in Israel.

This report documents how Israel has created convoluted legal rules to thwart Eritrean and Sudanese refugees' attempts to secure the protection to which they are entitled under international and Israeli law. It also shows how Israel has used the resulting insecure legal status as a pretext to detain or threaten to detain them indefinitely, and has thereby coerced thousands into leaving Israel. Israel's policies are well summed up in the words of former Israeli Interior Minister Eli Yishai who said that as long as Israel cannot deport them to their home countries, it should "lock them up to make their lives miserable."

In February 2013, the office of the United Nations High Commissioner for Refugees (UNHCR) in Tel Aviv said that an "agreement to return to Eritrea under a jail ultimatum cannot be considered voluntary by any criterion." This report demonstrates that Eritreans and Sudanese who agree to leave Israel for their own countries under threat of indefinite detention if they stay should be considered victims of refoulement, that is, victims of a breach of the prohibition against forcibly returning "in any manner whatsoever" a refugee or asylum seeker to a risk of persecution, or anyone to likely torture or inhuman and degrading treatment.

Eritreans and Sudanese report to the Holot "Residency Center" in Israel's Negev desert on February 17, 2014. Holot is a detention center in all but name, with "residents" required to sign in three times daily, and be there by night, while the nearest town is 65 kilometers away.

By 2012, Israel had deported about 2,300 Sub-Saharan African nationals back to their home countries, including to South Sudan which became independent in July 2011, after it had decided they no longer risked harm there. But it was still faced with the question of how to treat the approximately 37,000 Eritreans and 14,000 Sudanese seeking sanctuary in Israel who had managed to cross from Egypt before Israel's new fence had all but sealed off its border with Egypt in December 2012.

Israel's response has been to coerce them into leaving the county. Under 2012 and 2013 amendments to Israel's 1954 Prevention of Infiltration Law authorizing indefinite detention, Israel has detained up to 3,000 at any given time while the remaining tens of thousands living in Israel's cities—mainly in Tel Aviv, Arad, Ashdod, Ashkelon, Eilat and Jerusalem—live in constant fear of being ordered to report to detention centers.

Hot on the heels of the 2012 amendments, Israeli officials started to vilify the "infiltrators." In May 2012, a member of the Knesset, Israel's parliament, called them "a cancer in our body," and the same month, Prime Minister Benjamin Netanyahu called them "a threat to the social fabric of society, our national security, our national identity … and … our existence as a Jewish and democratic state." Other officials flatly stated without any evidence that none of them were refugees and all had come to Israel only to find work.

Eritreans and Sudanese detained in the Holot "Residency Center" in Israel's Negev desert wait in line on February 15, 2014 to leave through the front gates to meet activists from Tel Aviv handing out food and clothes just outside the center's barbed wire perimeter.

The December 2013 amendments established the Holot "Residency Center" in Israel's Negev desert. The authorities claim that Eritreans and Sudanese ordered to report to the center are not detained because they can leave the center for a few hours at a time. Yet the remote center built and guarded by Israel's prison service is a detention center in all but name, requiring people there to report three times a day and to be in the center at night.

Israel's use of detention to coerce people into leaving has been reinforced by an asylum system that systematically denies Eritreans and Sudanese access to fair and efficient asylum procedures. This helps Israel avoid granting them refugee status which would entitle them to remain in Israel with freedom of movement and associated rights until it is safe for them to return to their home countries.

Between 2004 and late 2012, the Israeli authorities refused to register Eritrean and Sudanese asylum claims, telling them they had no need for refugee status because Israel was tolerating their presence under its policy of granting group protection—essentially a right not to be deported from Israel—to certain nationalities.

Until late 2012, it was almost impossible for most detained Eritreans and Sudanese to lodge asylum claims while those in the cities also struggled to do so. Some detainees were allowed to lodge claims in late 2012. Following pressure from Israeli refugee organizations, larger

numbers of detainees were finally allowed to lodge claims in February 2013, the same time as asylum seekers in Israel's cities managed to start registering their claims.

Israeli refugee lawyers have said that, as of mid-August 2014, the authorities had reviewed the claims of some detained Eritrean and Sudanese asylum seekers but there was no evidence they had reviewed a single claim lodged by urban Eritrean and Sudanese asylum seekers. Senior Israeli officials' repeated statements that Eritreans and Sudanese are not refugees and are in Israel only for work likely explains the high rejection rates— 99.9 percent for Eritreans and 100 percent for Sudanese as of mid-August 2014.

The systematic rejection rate of Eritrean claims can also be explained by the Interior Ministry's instructions to asylum adjudicators to reject any Eritrean asylum seekers who base their asylum claim on a fear of persecution resulting from evading life-long military service in Eritrea. Drawing on restrictive jurisprudence by a few courts in two countries, the instructions state that simple fear of undisputed excessive punishment in Eritrea for evading national service does not amount to persecution under international refugee law and that an individual must show that the punishment would be inflicted for political reasons.

In fact, the Eritrean government generally regards Eritreans who desert or evade military service as disloyal or treasonous—essentially an imputed political opinion—and the punishment for desertion or evasion is so severe and disproportionate that it amounts to persecution.

Until March 2013, the authorities allowed UNHCR to carry out very limited monitoring of asylum adjudication procedures but terminated this arrangement when UNHCR joined petitioners challenging the constitutionality of the January 2012 legislation.

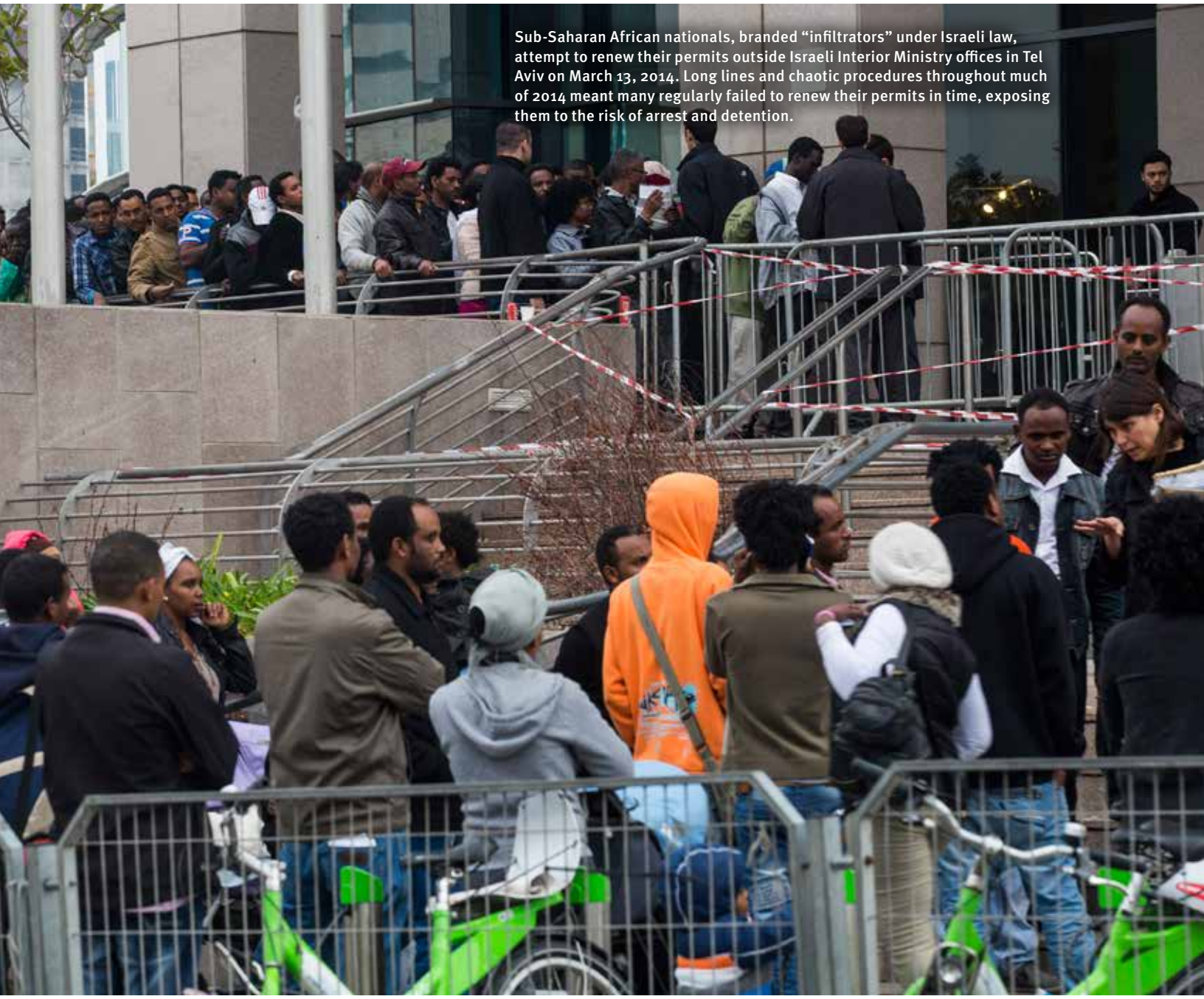
Since August 2008, Israeli authorities have issued Eritreans and Sudanese with conditional release permits which function as temporary residence permits that have to be periodically renewed. In December 2013, the authorities introduced new procedures that severely restrict conditional release permit holders' access to permit renewal procedures. This has caused chaos and panic for the 50,000 people required to renew their permit every few months.

Many have ended up with expired permits because they repeatedly failed to get to the front of queues to renew their permit in time. Between January and March 2014, and again since early May 2014, this has exposed them to arrest and detention for unlawful presence and some have lost their jobs because employers are prohibited from employing anyone without a valid permit. Representatives of the Eritrean and Sudanese community told Human Rights Watch that the resulting stress and lack of resources to survive have contributed to the decision of many Sudanese and Eritreans living in Israeli cities to leave Israel.

Ambiguous and unclear policies on work have also made it almost impossible for many Eritreans and Sudanese to find and retain employment or to run their own businesses, leaving them in fear of destitution. Combined with numerous obstacles to accessing different types of healthcare, this has added significantly to the psychological pressure to leave Israel.

Since June 2012, Israeli officials have regularly claimed they were about to sign agreements with some African countries governing the transfer of Eritreans and Sudanese from Israel. As of mid-August 2014, no African country has confirmed any such agreement exists. UNHCR guidance requires that transfers of asylum seekers should comply with a range of conditions, including the existence of a formal agreement regulating transfers.

Absent such agreements, there is no guarantee that receiving countries will admit Eritreans and Sudanese and no assurance those countries will not return them to their home countries where they risk persecution. Yet Israel's policies have coerced at least 83 Eritreans and Su-



Sub-Saharan African nationals, branded "infiltrators" under Israeli law, attempt to renew their permits outside Israeli Interior Ministry offices in Tel Aviv on March 13, 2014. Long lines and chaotic procedures throughout much of 2014 meant many regularly failed to renew their permits in time, exposing them to the risk of arrest and detention.

danese, including some in detention, to depart Israel to Rwanda and Uganda, and in one known case to Ethiopia, without any formal transfer agreements.

Israel's openly stated policy of doing everything it can to encourage Eritreans and Sudanese to leave the country has led it to breach Israeli and international laws' prohibition on arbitrary detention and refoulement.

Israel has a stark choice. It can either continue to try to ignore the reality that tens of thousands of Eritreans and thousands of Sudanese on its territory will not be leaving Israel any time soon and continue to spend large amounts of money and effort trying to coerce them into leaving, or it can choose to give them secure legal status in Israel until it is safe for them to return in safety and dignity to their home countries.

Sub-Saharan African nationals wait outside Israeli Interior Ministry offices in Tel Aviv on March 13, 2014 to renew their "conditional release permits." Any Eritrean or Sudanese who entered Israel before May 31, 2011 can have their permit cancelled and be summoned to report to the Holot "Residency Center" in Israel's Negev desert where they face indefinite detention.

Fairly reviewing tens of thousands of individual asylum claims in line with international refugee law standards would run up huge bills, take years, and, in any case, lead to the likely conclusion that all Sudanese and most Eritreans in Israel have valid refugee claims.

Given the large numbers, the fact that most are likely to be refugees, the similar needs faced by all of them, and the operational challenges involved in any response, Human Rights Watch believes that the government should adopt the simplest, fairest, and most expedient possible approach. There are two main options if the government wants to adopt such an approach.

The first option would be to make an official one-off declaration, based on severe criminality penalties to which any Sudanese national who sets foot in Israel is liable, that Israel will recognize on a prima facie basis all Sudanese as refugees and based on the severe penalties that Eritreans who evade indefinite military service face, that Israel will assess Eritrean asylum claims in line with UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea.

The second option would be for the authorities to grant Eritreans and Sudanese in Israel a secure temporary protection status based on established criteria, such as widespread human rights abuses in their home coun-

tries. The status should be renewed until conditions in Eritrea and Sudan sufficiently improve to allow for return in safety and dignity or until Israel's asylum system is capable of providing full and fair decisions on individual refugee claims. To avoid the current challenges of renewing permits every few months, the status would be granted in at least 12-month increments and would come with work authorization.

The new status could be based on human rights grounds as opposed to refugee law. By granting this status, Israel would acknowledge that Eritreans and Sudanese cannot be returned to their home countries without exposing them to the risk of serious harm but would not require that they meet refugee law's requirement of having a well-founded fear of being persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion. International human rights law provides other grounds for the principle of nonrefoulement. The UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment prohibits returning anyone to a place where they would be in danger of being tortured and the International Covenant on Civil and Political Rights also prohibits the return of anyone to cruel, inhuman and degrading treatment.

Israel's High Court of Justice has said human rights law binds Israel when considering whether or not to return a person to a place where they could face harm. Israeli officials have repeatedly said that Eritreans cannot be deported to their country of origin because of the dangers they face there.

Given that the Interior Ministry has already registered all Eritreans and Sudanese in Israel, transferring them from their current insecure legal status to the new status would not pose any bureaucratic challenges.

Eritreans and Sudanese benefiting from the status would continue to have the right to apply for asylum, including after the status is withdrawn. Even if the authorities opted not to process the asylum claims of beneficiaries of the new status, they would still need to assess claims of any people claiming a new or continuing fear of persecution upon return.

To end a decade of ad hoc and unlawful Israeli asylum polices that now threaten to result in mass refoulement of thousands of Eritreans and Sudanese, Human Rights Watch calls on Israel's allies to publicly pressure the Israeli authorities to adopt such an approach.

RECOMMENDATIONS

To the Government of Israel

- End the indefinite detention of Eritreans and Sudanese; detain only newly arriving Eritreans and Sudanese as a last resort, for a limited time, and to achieve a legitimate goal prescribed by law such as verifying a person's identity; ensure that an independent court regularly reviews each individual decision to detain a person.

- Do not transfer Eritreans and Sudanese to any third country unless there is a formal agreement in place that fully complies with relevant UNHCR Guidelines.

- Recognize all Sudanese in Israel as refugees on a prima facie basis, given they have a sur place refugee claim because they could be subject to criminal penalties of up to ten years in prison for having set foot in Israel.

- Consider Eritrean refugee claims consistently with UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea.

- While allowing Eritreans and Sudanese to lodge individual asylum claims, also grant them a renewable 12-month temporary status with work authorization until it is safe to return to their countries. Such a measure is justified on the following grounds: the serious and widespread human rights abuses in Eritrea and Sudan; Israel's inability to deport Eritreans and Sudanese; and Israel's lack of capacity to process the large number of backlogged asylum claims fairly and expeditiously.

- Amend Israel's asylum procedures to include complementary forms of protection to protect people fleeing serious human rights abuses or indiscriminate violence arising from armed conflict. Complementary forms of protection are promoted by UNHCR and incorporated in regional protection instruments in Africa, the European Union, and the Americas to protect such people.

- End the chaotic procedures for Eritrean and Sudanese to renew their conditional release permits and put in place procedures that are fair, transparent, and efficient.

- Allow UNHCR to monitor all stages of Israeli asylum procedures and decision-making to ensure they are consistent with international standards.

- Ensure that as lawfully staying foreign nationals in Israel, Eritreans and Sudanese can access wage-earning employment and respect their right to access healthcare.

To the United Nations High Commissioner for Refugees

- Document and publish the reasons why Eritreans and Sudanese in detention and cities are agreeing to return to their countries, including any indication they are leaving due to Israel's indefinite detention policies and other coercive measures.

- Press Israeli authorities not to facilitate the departure of Eritreans and Sudanese to other countries without signed agreements guaranteeing Eritreans and Sudanese access to fair and efficient asylum procedures that protect them from being returned to places threatening their life or freedom.

- Press Israeli authorities to end their restrictive approach to Eritrean asylum claims and decide them consistently with UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea.

- Call on Israeli authorities to allow UNHCR to monitor all stages of the asylum procedure to ensure that decisions are taken fairly and in accordance with international refugee law.

- Press Israeli authorities to grant all Eritreans and Sudanese in Israel a renewable 12-month secure legal status.

- Regularly inform international donors to Israel about UNHCR's concerns relating to Israel's treatment of Eritreans and Sudanese and encourage them to press Israel to adopt the recommendations made in this report.

To the United States and Other International Donors

- Press Israel to adopt the recommendations made in this report, in particular:

  » Call on the authorities to end the indefinite detention of Eritreans and Sudanese for the purpose of coercing them to return to places where they fear being persecuted or otherwise harmed.

  » Encourage the authorities to allow UNHCR to monitor all parts of Israel's asylum procedures and raise concerns with them if the procedures are not consistent with international standards and if their refugee decision-making is grossly inconsistent with other states that assess the claims of similarly situated refugee claimants.

  » Press the authorities to grant Eritreans and Sudanese a renewable 12-month temporary status with work authorization until it is safe for them to return to their respective countries.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Methodology

This report is based on research conducted in Tel Aviv and outside the front gates of the Holot Detention Center, Israel, between January 3 and 19, 2014. A Human Rights Watch researcher conducted in-depth individual interviews with 23 Eritrean and 19 Sudanese (36 men and 6 women). It also draws on background research carried out in Israel in March and November 2012.

Human Rights Watch worked with nongovernmental organizations (NGOs) and Eritrean and Sudanese community leaders in Tel Aviv to identify Eritreans and Sudanese. Interviews were conducted individually, mostly in private and confidential settings, and lasted an average of 45 minutes.

Human Rights Watch staff explained the purpose of the interviews, gave assurances of anonymity, and explained to interviewees they would not receive any monetary or other incentives for speaking with Human Rights Watch. We also received interviewees' consent to describe their experiences after informing them that they could terminate the interview at any point. Individual names and other identifying details have been removed to protect their identity and security.

Interviews were conducted in English or where necessary in Tigrinya and Arabic using interpreters.

Human Rights Watch also interviewed a UNHCR official, nine NGO staff members, two lawyers, and one academic specializing in refugee affairs. Human Rights Watch emailed and called Israeli officials at the Ministry of Interior and Ministry of Justice multiple times requesting a meeting, and sent the Interior Ministry a letter with our findings and requesting answers to a number of questions. We never received an answer.

I. Background: Eritreans and Sudanese in Israel

Between January 2006 and the end of 2013, the Israeli authorities said they had registered 64,498 foreign nationals irregularly entering Israel, mostly at the Egyptian border. About half entered Israel at that border between January 2011 and June 2012 alone.[1] By the end of 2013, 52,961 remained in Israel of whom about 49,000 were Eritreans and Sudanese.[2] By early July 2014, a further 5,000 or so mostly Sudanese had left Israel.[3] Most of the remaining 44,000 Eritreans and Sudanese live in the cities of Tel Aviv, Arad, Ashdod, Ashkelon, Eilat and Jerusalem. As of mid-June 2014 about 2,500 were in detention.[4] Eritreans and Sudanese make up almost a fifth of the total number of foreigners in Israel.[5]

Why they Left Home and Came to Israel

Until 2013, the Israeli authorities all but blocked access to asylum procedures for Eritreans and Sudanese. Absent a fair and efficient asylum system that might otherwise have objectively reviewed Eritrean and Sudanese refugee claims, there is no definitive way of saying why Eritreans and Sudanese came to Israel.[6] This has not prevented Israeli officials from claiming they are not refugees and came to Israel only to find work.[7]

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[1] Population, Immigration and Borders Authority (PIBA), "Statistics of Foreigners in Israel, Summary of 2013," January 2014, http://bit.ly/PKoUzm (accessed August 13, 2014).

[2] In September 30, 2013, the Interior Ministry said there were 35,987 and 13,249 Eritreans and Sudanese in Israel respectively. PIBA, "Statistics of Foreigners in Israel," October 2013, http://bit.ly/1nSrHDv (accessed March 26, 2014). Between 2005 and 2012, Israel also deported about 2,300 nationals from various sub-Saharan African states back to their countries. These include about 100 Sierra Leoneans in 2005, about 1,000 Cote d'Ivoire nationals in 2011, about 100 Liberians in 2007, and about 1,100 South Sudanese after July 9, 2011 following South Sudan's independence from Sudan. African Refugee Development Center and Hotline for Migrant Workers, "Do not Send Us So We Can Become Refugees Again," February 2013, http://bit.ly/1tBzBqk (accessed April 10, 2014), pp. 6, 14 and 15; Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben-Dor, May 18, 2014. Unknown numbers from various countries left Israel voluntarily between 2006 and 2013.

[3] PIBA, "Statistics of Foreigners in Israel, July 2014," http://bit.ly/1kLaxgl (accessed September 3, 2014).

[4] Knesset Research and Information Center, "The Geographical Distribution of Infiltrators and asylum Seekers in Israel," April 16, 2014, http://www.knesset.gov.il/mmm/data/pdf/m03052.pdf (accessed June 17, 2014); see below, section 2.

[5] Ben Hartman and Yaakov Katz, "Over 250,000 foreigners live in Israel, report finds," *Jerusalem Post*, January 8, 2012, http://www.jpost.com/National-News/Over-250000-foreigners-live-in-Israel-report-finds (accessed June 17, 2014).

[6] On trafficking and torture of Eritreans in Egypt heading to Israel, see Human Rights Watch, "*I Wanted to Lie Down and Die": Trafficking and Torture of Eritreans in Sudan and Egypt* (New York: Human Rights Watch, 2014), http://www.hrw.org/sites/default/files/reports/egypt0214_ForUpload_1_0.pdf.

[7] For example, in March 2014, the prime minister's office said, "The Israeli government … has completely halted the illegal infiltration into Israel and is determined to continue returning to their countries of origin the thousands of illegal migrant workers who have entered here." Ilan Lior, "Israel is sending asylum seekers to Rwanda without status, rights," *Haaretz (Tel Aviv),* April 4, 2014, http://www.haaretz.com/news/national/.premium-1.583764 (accessed April 7, 2014).

While it is possible that some did in fact leave their country only for economic reasons, Israeli officials have no way of knowing. International refugee law recognizes that a person claiming asylum may have many reasons for leaving his or her country and that having economic or personal reasons for leaving does not invalidate a refugee claim if the person also has a well-founded fear of being persecuted on return.[8]

Eritreans Fleeing Widespread Human Rights Abuses

Eritreans have sought asylum abroad in large numbers since mid-2004.[9] At least 200,000 fled across the Eritrean border into Ethiopia and eastern Sudan where they registered in refugee camps.[10] Many were escaping widespread human rights violations, including mass long-term or indefinite forced conscription and forced labor, extra-judicial killings, disappearances, torture and inhuman and degrading treatment, arbitrary arrest and detention, and restrictions on freedom of expression, conscience, and movement.[11]

UNHCR's 2011 Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea maintain that, in practice, the punishment for desertion or draft evasion is so severe and disproportionate that it constitutes persecution.[12] Most of those seeking asylum in Israel since 2004 have been Christians, reflecting increased abuses against that community in Eritrea since 2002.[13]

In other countries, such as Italy, Norway, Switzerland and the United Kingdom, where they have also sought asylum, the United Nations High Commissioner for Refugees (UNHCR) reports that in 2013, 83 percent of Eritrean asylum seekers were granted refugee status or

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[8] For further discussion of this point, see Human Rights Watch, *Neighbors in Need: Zimbabweans Seeking Refuge in South Africa*, (New York: Human Rights Watch, 2008), http://www.hrw.org/sites/default/files/reports/southafrica0608_1.pdf, June 2008, http://www.hrw.org/reports/2008/06/18/neighbors-need-0, section 7.

[9] Human Rights Watch, I Wanted to Lie Down and Die: Trafficking and Torture of Eritreans in Sudan and Egypt, section 1.

[10] UNHCR statistics, on file with Human Rights Watch.

[11] "Eritrea: Submission for 2013 Universal Periodic Review," Human Rights Watch news release, June 20, 2013, http://www.hrw.org/news/2013/06/20/eritrea-submission-universal-periodic-review; UN Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights in Eritrea, Sheila B. Keetharuth, Visit to Eritrea, A.HRC/26/45, May 13, 2014, http://www.refworld.org/docid/53a028174.html (accessed August 13, 2014).

[12] UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea," April 20, 2011, http://www.refworld.org/docid/4dafe0ec2.html (accessed April 9, 2014).

[13] "Eritrea: Submission for 2013 Universal Periodic Review," Human Rights watch news release, June 20, 2013, http://www.hrw.org/news/2013/06/20/eritrea-submission-universal-periodic-review.

some other protected status.[14] Hundreds of Eritreans in Israel have told Israeli organizations they fled Eritrea to escape indefinite military conscription.[15]

Sudanese Fleeing Conflict and Abuses

Sudanese have fled their country in large numbers since the outbreak of the conflict in Darfur in early 2003.[16] By the end of 2013, there were 636,405 registered Sudanese refugees and 28,705 registered Sudanese asylum seekers worldwide of whom 16,846 claimed asylum in 2013.[17]

Sudanese—including from South Sudan which became independent in July 2011—first came to Israel in significant numbers soon after Egyptian police opened fire on refugees demonstrating peacefully outside UNHCR's office in Cairo on December 24, 2005, killing at least 27.[18] A leading Israeli refugee NGO, Hotline for Refugees and Migrants (Hotline), said many Sudanese who came to Israel were UNHCR-registered refugees and asylum seekers in Cairo having fled the war in Darfur. According to the NGO, their clients said they left Egypt because of the shootings, lack of access to work, and racism.[19] In 2008, Human Rights Watch reported on challenges Sudanese and other refugees faced in Cairo.[20]

Sudan's Criminal Act states that Sudanese who visit an enemy state may be sentenced to 10 years in prison.[21] In October 2007, the Sudanese Refugees Commissioner Mohamed Alagbash claimed that Sudanese refugees in Israel wanted to "implement Zionism agendas against Sudan," and called on Egyptian authorities to "firmly penalize any

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[14] Sixty-seven percent were given refugee status and 16 percent were given other protected status. UNHCR, UNHCR Asylum Trends 2013: Levels and Trends in Industrialized Countries (Geneva: UN High Commissioner for Refugees, 2014), http://www.unhcr.org/pages/49c3646c4d6.html (accessed July 9, 2014), Annex Tables. In 2012, 83 percent were given refugee status and 6 percent were given other protected status. "Displacement: The New 21st Century Challenge, UNHCR Global Trends 2012," UNCHR News Stories, June 18, 2012, http://www.unhcr.org/4fd9e6266.html (accessed July 9, 2014).

[15] Human Rights Watch email correspondence with former staff member of Amnesty International-Israel, July 3, 2014.

[16] UNHCR, Statistical Yearbook 2004: Trends in Displacement, Protection and Solutions (Geneva: United Nations High Commissioner for Refugees, 2006), http://www.unhcr.org/44eb1ca42.html (accessed August 13, 2014).

[17] UNHCR, UNHCR Asylum Trends 2013: Levels and Trends in Industrialized Countries (Geneva: UN High Commissioner for Refugees, 2014), Annex tables.

[18] Human Rights Watch, *Sinai Perils: Risks to Migrants, Refugees and Asylum Seekers in Egypt and Israel* (New York: Human Rights Watch, 2008), http://www.hrw.org/sites/default/files/reports/egypt1108webwcover.pdf, pp. 18 and 21.

[19] Human Rights Watch interview with staff member at Hotline for Refugees and Migrants, Tel Aviv, January 8, 2014.

[20] Human Rights Watch, *Sinai Perils*, pp. 21- 22.

[21] The Criminal Act, 1991, *National Salvation Revolution Command Council*, January 31, 1991, http://bit.ly/1uSDRBV (accessed August 14, 2014), art. 52.

Sudanese refugees if they were found trying to infiltrate through Egypt into Israel."[22] In March 2014, a pro-government Sudanese newspaper reported that "the security apparatus continue[s] to carefully monitor Israel's espionage activities, particularly among Sudanese citizens who fled to Israel since 2002 and returned through South Sudan and other neighboring countries."[23]

In addition to specific refugee claims Sudanese asylum seekers in Israel might have related to the reasons they fled Sudan, all Sudanese in Israel therefore have a *sur place* refugee claim in which the well-founded fear of being persecuted arises as a consequence of events that happened or activities the asylum seeker engaged in after they left their country of origin.[24] All Sudanese arriving in Israel since 2006 should therefore automatically be recognized as refugees.[25]

Unwelcome: Israel's Official Response and Violence against Africans

States hosting recognized refugees are not obliged to grant them citizenship. However, under the 1951 Refugee Convention, refugees are entitled to receive protection and a range of rights—including but not limited to the right to work, free movement, access to health care, education and social welfare, and property rights—until it is safe for them to return to their home country.[26]

Despite its international legal obligations, Israel has not fulfilled its obligation to respect these rights of Sudanese and Eritrean refugees. Instead, it has adopted restrictive policies, labeling them "infiltrators"—whom officials said threaten Israel's

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[22] Charles Onians, "Egypt sends refugees to uncertain fate in Sudan," *Agence France-Presse*, October 29, 2007, http://www.reliefweb.int/rw/rwb.nsf/db900sid/EMAE-78FM49?OpenDocument (accessed June 17, 2014).

[23] "Sudanese security capture key member of Israeli spy network: report," *Sudan Tribune*, March 22, 2014, http://www.sudantribune.com/spip.php?article50390 (accessed May 18, 2014).

[24] UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees," HCR/IP/4/Eng/REV.1, January 1992, http://bit.ly/1qbVHyv, paras. 94 – 96.

[25] Recognizing all Sudanese in Israel as refugees would involve so-called "prima facie" recognition of refugee status under which states recognize nationals of a given country as refugees simply because of their nationality and the gravity of the situation in their country. For an introduction to the concept of prima facie recognition of refugees, see UNHCR, "Prima facie status and refugee protection," ISSN 1020-7473, October 24, 2002, http://www.refworld.org/docid/4ff3f8812.html (accessed April 11, 2014).

[26] UN Convention relating to the Status of Refugees (1951 Refugee Convention), 189 U.N.T.S. 150, entered into force April 22, 1954, acceded to by Israel on October 1, 1954, and its 1967 Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force October 4, 1967, acceded to by Israel June 14, 1968, http://bit.ly/1eSdp1Y (accessed May 18, 2014).

national security and Jewish identity—and denying them access to asylum procedures until early 2013.[27]

In August 2011, the then Interior Minister Eli Yishai said that "infiltrators" were an "existential threat to the Jewish State" and that he would "protect the Jewish majority of this country at any price."[28] In May 2012, Prime Minister Benjamin Netanyu referred to "illegal infiltrators flooding the country" who were "threaten[ing] the social fabric of society, our national security, our national identity … and … our existence as a Jewish and democratic state."[29] The same month, Likud member of the Knesset (MK) Miri Regev said that "the Sudanese were a cancer in our body."[30] And in August 2012, Yishai claimed that "the infiltrator threat is just as severe as the Iranian threat."[31]

These comments are also reflected in the government's stated justification for legislation the Knesset passed in December 2013 amending Israel's 1954 Prevention of Infiltration Act (also known as the "Anti-Infiltration Law"), which branded all sub-Saharan Africans who entered Israel from Egypt as "infiltrators."[32] The 1954 Act used the term "infiltrator" to refer to Palestinians who tried in the 1950s to cross into Israeli-controlled territory.[33] The term implies that the reason for coming to Israel is to harm the State or the civilians living there.

According to the official explanatory notes to the December 2013 amendments governing "infiltrators," the goal was:

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[27] In contrast to its reception of these non-Jewish asylum seekers, under the Law of Return Israel has established itself as a safe haven open to all Jews to enter and be eligible for citizenship. The Law of Return, *Sefer HaChukkim*, no. 51 of 1950, http://www.jewishvirtuallibrary.org/jsource/Politics/Other_Law_Law_of_Return.html (accessed May 18, 2014).), p. 159.

[28] "Eli Yishai asserts: We will return every infiltrator – until the last of them," *Channel 2 News*, August 8, 2012, http://www.mako.co.il/news-military/politics/Article-74bb292eddc1431017.htm (accessed July 15, 2014).

[29] Harriet Sherwood, "Israel PM: Illegal African Immigrants Threaten Identity of Jewish State," *Guardian*, May 20, 2012, http://www.guardian.co.uk/world/2012/may/20/israel-netanyahu-african-immigrants-jewish (accessed March 4, 2014).

[30] Ilan Lior and Tomer Zarchin, "Demonstrators Attack African Migrants in South Tel Aviv," *Haaretz*, May 24, 2012 http://bit.ly/1l69esx (accessed April 10, 2014).

[31] Omri Efraim, "Yishai: Next phase – arresting Eritrean, Sudanese migrants," *Ynetnews*, August 16, 2012, http://www.ynetnews.com/articles/0,7340,L-4269540,00.html (accessed April 10, 2014).

[32] PIBA, "Explanatory Notes to the Law for the Prevention of Infiltration (Offenses and Jurisdictions) (Amendment No. 4 and Temporary Order) 2013," November 20, 2013, http://www.nevo.co.il/Law_word/law15/memshala-817.pdf (accessed June 17, 2014), p. 122. Unofficial English translation of explanatory notes and law on file with Human Rights Watch.

[33] Rosa Luxemburg Stiftung in Israel, "#Strike for Freedom: A Report about the Campaign of African Asylum Seekers in Israel against Imprisonment and for Human Rights," January 16, 2014, http://bit.ly/1sPkEDj (accessed August 18, 2014).

> …to reduce the negative influences of the phenomenon of large-scale infiltration experienced by Israel … – influences manifested, inter alia, in damage to the fabric of life in Israeli society, damage to the job market, the reduction of resources in various systems, such as the education system, the health system, and the wealth system, which are reserved for Israeli citizens and residents lawfully present therein, and heightened crime in the areas in which the illegal immigrants are concentrated.[34]

The December 2013 amendments, following in the footsteps of similar amendments adopted in January 2012 that were struck down by the Israeli High Court in September 2013, allowed the authorities to detain newly arriving "infiltrators" indefinitely.[35]

By early July 2012—by which time Israel had sealed off much of the 240-kilometer border with Egypt with a five-meter high steel fence—there was a sharp drop in the number of Eritreans and Sudanese crossing from Egypt with only 730 crossing in the last six months of 2012.[36] In October 2012, Human Rights Watch reported on Israeli border guards pushing people back at the border fence.[37] By December 2012, Israel had all but completed the fence and the final 20 kilometers were built by the end of 2013.[38] In 2013, only 43 people managed to cross and only 21 crossed during the first six months of 2014.[39]

In April 2012, there were a series of violent attacks by unknown perpetrators in Tel Aviv against Africans and their businesses.[40] Further attacks took place the next month, including in Tel Aviv on May 23 which immediately followed an anti-immigration rally

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[34] PIBA, "Explanatory Notes."

[35] See section 2.

[36] "Summary of the Number of Infiltrators," Office of the Prime Minister of Israel press release, December 31, 2012, http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokesikum311212.aspx (accessed March 26, 2014).

[37] "Israel: Asylum seekers blocked at the border," Human Rights Watch news release, October 28, 2012, http://www.hrw.org/news/2012/10/28/israel-asylum-seekers-blocked-border.

[38] "Construction of Israel-Egypt border fence has been completed," *Jerusalem Post*, December 4, 2012, http://bit.ly/1zsFtTl (accessed July 15, 2014); Gideon Ben-zvi, "Israel Completes 245 Mile, NIS 1.6 Billion Security Fence Along Sinai Border with Egypt," *Algemeiner*, December 4, 2013, http://bit.ly/1p5zJJh (accessed August 13, 2014).

[39] PIBA, "Statistics of Foreigners in Israel, Summary of 2013," January 2014, http://bit.ly/PKoUzm (accessed July 9, 2014); "In June, 217 infiltrators voluntarily left Israel," *Eilati*, July 1, 2014, http://www.eilati.co.il/article-7482.asp (accessed August 13, 2014). In 2013 and 2014, Hotline staff interviewed a number of Israeli Defense Force soldiers serving on the border with Egypt who say that most of those who crossed were allowed to do so by Israeli soldiers who took pity on them because of evident torture marks on their faces and torsos. Human Rights Watch email correspondence with Hotline, July 30, 2014.

[40] Haggai Matar, "Community shaken after night of arson attacks on African refugees," *+972mag*, April 27, 2012, http://972mag.com/community-shaken-after-coordinated-attacks-on-african-refugees/43727/ (accessed April 10, 2014).

attended by Members of the Knesset who called for the deportation of all "infiltrators."[41] In September 2013, UNHCR said it was "concerned by xenophobic statements made by some public officials and journalists in Israel, who … stigmatize asylum seekers."[42]

Responding to media questions in May 2012 on the new detention policy for "infiltrators," Israel's then Interior Minister Eli Yishai said that as long as he was unable to deport them he would "lock them up to make their lives miserable."[43]

In December 2012, Prime Minister Benjamin Netanyahu said his party was "moving on to the second stage, that of repatriating the infiltrators who are already here."[44] He added that "infiltrators" had been leaving Israel and would "soon do so every month until the tens of thousands of people who are here illegally return to their countries of origin."[45]

In early January 2014, Israel's Interior Minister Gideon Sa'ar said "the purpose of our policies is to encourage the illegals to leave."[46]

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[41] Ilan Lior and Tomer Zarchin, "Demonstrators attack African migrants in south Tel Aviv," *Haaretz* , May 24, 2012, http://bit.ly/1l69esx (accessed April 10, 2014).

[42] UNHCR, Submission by UNHCR For the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review, Israel, 17th UPR Session, September 2013, http://bit.ly/1w17wgz (accessed August 18, 2014).

[43] Omri Efraim, "Yishai: Next phase – arresting Eritrean, Sudanese migrants," *Ynetnews*, August 16, 2012, http://www.ynetnews.com/articles/0,7340,L-4269540,00.html (accessed April 10, 2014).

[44] Herb Keinon and Ben Hartman, "Netanyahu Ready For 'Stage 2' in Expelling Migrants," *Jerusalem Post*, December 24, 2012, http://www.jpost.com/ NationalNews/Article.aspx?id=297158 (accessed March 4, 2014).

[45] "Summary of the Number of Infiltrators," Office of Prime Minister of Israel press release, December 31, 2012, http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokesikum311212.aspx (accessed March 26, 2014).

[46] David Lev, "Sa'ar: If Illegals Don't Want to Leave, We'll Make Them Leave," *Israel National News*, January 7, 2014, http://www.israelnationalnews.com/News/News.aspx/176000#.U3nRr_ldX9s (accessed August 13, 2014).

II. Unlawful Detention

The use or threat of indefinite detention is the key tool for Israel's policy of coercing Sudanese and Eritreans to leave the country. It is made possible because Israel avoids recognizing their claims for international protection and providing them with the secure legal status to which they are entitled. Without protected status, Israel can "lock them up to make their lives miserable," thus inducing them to leave.[47]

Indefinite Detention of "Infiltrators": The January 2012 Law

In January 2012, the Knesset passed the third amendment to Israel's Anti-Infiltration Law, which authorized the authorities to detain anyone entering Israel irregularly—that is, without passing through an official border post—with no upper limit on the length of detention, with no eligibility to qualify for a conditional release permit, and without the possibility to challenge their detention.[48]

In September 2012, Israeli authorities also passed a regulation authorizing the arrest and detention of anyone who had irregularly entered Israel and whom the deputy attorney general, with the support of a "judicial opinion," suspected of having committed offenses "endangering national security or the public peace."[49] No charge or conviction was necessary for detention on these grounds. This was followed in July 2013 by another regulation extending the categories of offenses on mere suspicion of which such people could be arrested and detained, again without charge or trial. The new offenses included "low-level property offenses," "offenses of forgery," including specifically the forgery of visas and permits, and "offenses of violence" including "low level threats and regular assault offenses" that "cause real harm to the public order."[50]

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[47] Omri Efraim, "Yishai: Next phase – arresting Eritrean, Sudanese migrants," *Ynetnews*, August 16, 2012, http://www.ynetnews.com/articles/0,7340,L-4269540,00.html (accessed April 10, 2014).

[48] Law for the Prevention of Infiltration (Offenses and Judging) (Amendment No. 3 and Temporary Order) 5772-2012, January 9, 2012, http://bit.ly/1vK51hu (English) and http://bit.ly/1r6u9Kf (Hebrew) (accessed July 15, 2014), section 30A(iii)(3); "Israel: Amend Anti-Infiltration Law," Human Rights Watch news release, June 10, 2012, http://bit.ly/1rMgCMd. In October 2013, the authorities began to issue some detainees with conditional release permits once they were released. Human Rights Watch email correspondence with Anat Ben-Dor, August 8, 2014.

[49] PIBA, "Regulation for the treatment of infiltrators involved in criminal proceedings," September 2012, http://bit.ly/1BV4URL (English) and http://bit.ly/1l8IjMk (Hebrew) (accessed June 20, 2014); "Israel: Detained Asylum Seekers Pressured to Leave," Human Rights Watch news release, March 13, 2013, http://bit.ly/1A96lZ9.

[50] PIBA, "Procedure for dealing with infiltrators involved in criminal activities," July 1, 2013, http://www.piba.gov.il/Regulations/10.1.0010.pdf (accessed June 20, 2014); "Israel: New Pressure on Asylum Seekers to Leave," Human Rights Watch news release, July 23, 2013, http://bit.ly/1nT3rlC.

In late July 2013, UNHCR officials in Israel and Hotline said that many of the hundreds of people detained under the regulations were suspected—not charged or convicted— of only modest offenses, such as minor assault or possession of stolen goods like mobile phones or, in one case, the unfounded suspicion of a theft of a bicycle.[51]

During the first half of 2013, UNHCR and Hotline documented how detention officials had put pressure on almost 1,500 detainees to sign forms stating they wished to leave Israel.[52]

In September 2013, Israel's High Court ruled that the January 2012 amendments to the 1954 Anti-Infiltration Law breached the right to liberty under Israel's Basic Law because detention was only justifiable pending deportation and, according to Israeli officials' own statements, neither Eritreans nor Sudanese could be deported to their home countries.[53] The Court ordered that about 1,700 detainees held at the Saharonim Detention Center be given individual custody hearings by December 15, 2013 and that anyone who had been detained for more than 60 days should be released, unless their continued detention could be justified under Israel's 1952 Law of Entry.[54]

Officials did not immediately implement the order, so Israeli NGOs sought two contempt of court orders in October 2013.[55] At a contempt of court hearing on December 9, the Interior Ministry said it had released 683 detainees who had received conditional release permits, while about 1,000 remained in the Saharonim Detention Center until December 12.[56]

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[51] Human Rights Watch phone interviews and email correspondence with UNHCR and Hotline, July 2013; "Israel: Detained Asylum Seekers Pressured to Leave," Human Rights Watch news release, March 13, 2013; Omri Efraim, "Sudanese Actor Portraying Policeman Arrested," *Ynet News*, July 21, 2013, http://bit.ly/1qy7RSj (accessed July 11, 2014).

[52] Human Rights Watch phone interviews and email correspondence with UNHCR and Hotline, February, March and July 2013; "Israel: Detained Asylum Seekers Pressured to Leave," Human Rights Watch news release, March 13, 2013 ; "Israel: New Pressure on Asylum Seekers to Leave," Human Rights Watch news release, July 23, 2013. The official title of the form is "Procedure for the documentation of free consent of infiltrators from Eritrea and the Republic of Sudan that are located in custody and request to leave Israel; to their countries." Copy on file with Human Rights Watch.

[53] "Israel: Drop Detention Policy in Disguise," Human Rights Watch news release, December 18, 2013, http://bit.ly/1bdBJsv; Human Rights Watch email correspondence with Israel refugee lawyer, Yonatan Berman, May 11, 2014.

[54] "Israel: Drop Detention Policy in Disguise," Human Rights Watch news release, December 18, 2013. Section 13F(b) of the 1952 Entry Into Israel Law allows the authorities to detain a person for longer than 60 days only if a person's deportation is being delayed because of his or her lack of cooperation with deportation proceedings or if releasing the person would pose a danger to national security, public health, or public order.

[55] Five Eritrean petitioners and four Israeli NGOs filed contempt of court orders in the Supreme Court on October 28, 2013 and November 26, 2013. Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben Dor, May 29, 2014; see also, Hotline for Refugees and Migrants, "'From One Prison to Another': Holot Detention Facility," June 2014, http://www.scribd.com/doc/230142608/From-One-Prison-to-Another-Holot-Detention-Facility (accessed July 15, 2014), p. 7.

[56] Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben Dor, May 29, 2014; "Israel: Drop Detention Policy in Disguise," Human Rights Watch news release, December 18, 2013.

Indefinite Detention of "Infiltrators": The December 2013 Law

Since mid-December 2013, the Israeli authorities have detained Eritreans and Sudanese under a new indefinite detention policy whose constitutionality Israeli lawyers have challenged in court and on which the High Court was due to rule in early September 2014. Under the law, newly arriving Eritreans and Sudanese are detained in official detention centers before being transferred to a so-called "Residency Center," while others already in Israel are ordered to report to the Residency Center.

A New Legal Fiction: "Residency Centers"

On December 10, 2013, the Knesset passed new legislation allowing officials to detain any newly arriving "infiltrators" for up to a year.[57] The law also established so-called "centers for residents," and authorized the authorities to require certain groups of "infiltrators" to live in them.[58]

Two days later, on December 12, 2013, officials transferred 480 detainees from the Saharonim Detention Center to the "Holot Residency Center," located a few hundred meters from Saharonim.[59]

In late March 2014, Israel's interior minister said Holot had a capacity of about 3,000 beds and that "in the near future" the authorities planned to expand the center.[60] As of mid-June 2014, there were 2,369 people detained in Holot.[61]

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[57] Law for the Prevention of Infiltration (Amendment No. 4). According to Israeli refugee lawyer, Yonatan Berman, the authorities have argued there are two reasons why they can lawfully detain newly-arriving "infiltrators" for up to one year under the December 10, 2013 amendments to the Anti-Infiltration Law despite the 60-day rule in the 1952 Entry Into Israel Law. First, they argue that the one-year rule is less onerous because it only applies to "infiltrators" entering after December 10, 2013, unlike the three-year detention provisions under the January 2012 amendments to the Anti-Infiltration Law which applied retroactively to anyone who had entered Israel irregularly at any point in time. Second, they say that two of the nine High Court Justices who ruled on the constitutionality of the January 2012 amendments said that the authorities could lawfully detain "infiltrators" for up to one year. Human Rights Watch email correspondence with Israeli refugee lawyer, Yonatan Berman, May 11, 2014.

[58] The four groups are: (i) newly arriving "infiltrators" after they are released from their initial detention; (ii) "infiltrators" detained under the January 2012 law and released from their initial place of detention; (iii) an "infiltrator" failing to hold a valid conditional release permit; and (iv) most importantly, any "infiltrator" living in Israel whose conditional release permit the authorities have decided to cancel for whatever reason. Law for the Prevention of Infiltration (Amendment No. 4), sections 32D(a), (b) and (c) and section 32T(c).

[59] Human Rights Watch interview with UNHCR and Hotline, December 16, 2014; "Israel: Drop Detention Policy in Disguise," Human Rights Watch news release, December 18, 2013. As of mid-August 2014, Holot was the only place the authorities had designated as a "Residency Center."

[60] Ilan Lior, "Israel's interior minister seeks to extend grants to leaving migrants," *Haaretz* , March 26, 2014 http://www.haaretz.com/mobile/.premium-1.582154 (accessed March 27, 2014).

Israeli officials dispute that Holot is a detention center calling it an "open resident center."[62] They say the center cannot be termed a detention center because people living there are allowed to leave for a few hours at a time.[63] Detainees can also use a public bus service that runs between Holot and the nearest city, Beer Sheva, 65 kilometers away.[64]

But Holot is a detention center in all but name.[65] Israel's Defense Ministry built the center.[66] The Israeli Prison Service guards it.[67] A four-meter-high fence surrounds the center.[68] The December 10 law states that "residents" must report three times a day and that "residents" must be inside the center between 10 p.m. and 6 a.m.[69]

If the head of the Border Control decides that a "resident" has breached—or is suspected of planning to breach—the center's rules, the new law authorizes an Interior Ministry official to order the person to be detained in an official detention center for up to 12 months.[70]

The new detention policy provoked several protests. In mid-December 2013, hundreds traveled from the Holot Detention Center in Israel's Negev desert to the Knesset in Jerusalem to protest Israel's indefinite detention policy.[71] On February 17, 2014, hundreds travelled to the Holot Detention Center to express their solidarity with those detained

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[61] Ilan Lior, "Asylum seekers at Israeli detention facility to launch new protest," *Haaretz*, June 16, 2014, http://www.haaretz.com/news/national/.premium-1.598946 (accessed July 15, 2014).

[62] PIBA, "Notice of establishment of a center for infiltrators and of the beginning of enforcement against employers of infiltrators," December 12, 2103, http://bit.ly/1tXSBR8 (accessed June 20, 2014).

[63] Knesset Committee of Internal and Environmental Affairs, "Protocol No. 26 of meeting of Knesset Committee of Internal and Environmental Affairs," March 26, 2014, http://bit.ly/1qlE3Ib (accessed June 20, 2014). Border Control Officers are also authorized to "exempt" detainees from having to be in Holot for a period not exceeding 48 hours. As of June 2014, the authorities said they had granted 284 exemptions, most for 24 hours. Hotline, "From One Prison to Another," pp. 19 – 20.

[64] Shirly Seidler and Roy Arad, "Walking in the cold and on an empty stomach: the immigrants march to the Knesset," *Haaretz*, December 16, 2013, http://www.haaretz.co.il/news/education/.premium-1.2192246 (accessed July 11, 2014).

[65] See below for international law on detention.

[66] Gerry Simpson, "African asylum seekers in Israel march on Jerusalem to protest conditions," *Al-Monitor*, December 26, 2013, http://bit.ly/10AWdSK (accessed June 20, 2014).

[67] PIBA, "Explanatory Notes to the Law for the Prevention of Infiltration (Offenses and Jurisdictions) (Amendment No. 4 and Temporary Order) 2013," November 20, 2013, http://www.nevo.co.il/Law_word/law15/memshala-817.pdf (accessed June 17, 2014), p. 4. Unofficial English translation on file with Human Rights Watch.

[68] Human Rights Watch visited the center in January 2014.

[69] Law for the Prevention of Infiltration (Amendment No. 4), sections 32(H)(A) and (B).

[70] Ibid., section 32(T).

[71] "Photos of the week: The long walk to freedom," *+972 Magazine*, December 19, 2013, http://972mag.com/photos-of-the-week-the-long-walk-to-freedom/83909/ (accessed June 18, 2014).

there.[72] On June 28, 2014, hundreds of Eritreans and Sudanese detained in Holot walked to the Israel-Egypt border to protest their detention.[73]

Until early March 2014, diplomats, NGOs, journalists and lawyers were denied access to the inside of Holot.[74] The authorities said they could meet with Holot residents in the parking area outside the front gates.[75] On March 6, the authorities said they would allow assistance organizations access if they requested advance access for on specific dates.[76]

In November 2013, the Knesset's legal advisor submitted a legal opinion to the Knesset's Internal Affairs and Environment Committee in which he outlined a number of concerns relating to the then draft law, including that

> …those held in the facility will have to report to the Prison Services up to three times a day, without being able to leave the compound at night. Since the facility is located in the Negev [desert], at a distance from a residential area, these limitations can prevent infiltrators from effectively leaving the place and in fact turn the open facility into a closed one.[77]

In January 2014, Human Rights Watch visited the outside of the center and spoke with three of the detainees who described the conditions inside, and why they felt like they were in detention.[78] A 21-year-old Eritrean man said:

> Life here in Holot is the same as in Saharonim [Detention Center]. I was in the first group they took from Saharonim to Holot, on December 12. I have been detained since I came to Israel on November 17, 2012. Lots of people have mental problems because they were in Saharonim and I am also afraid

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[72] "PHOTOS: 24 hours outside Holot 'open' detention center," *+972 Magazine*, February 19, 2014, http://972mag.com/photos-24-hours-outside-holot-open-detention-center/87336/ (accessed June 18, 2014).

[73] Michael Omer-Man, "Asylum seekers march out of 'open prison,' demand resettlement," *+972 Magazine*, June 28, 2014, http://bit.ly/1w3APLR (accessed September 3, 2014).

[74] Human Rights Watch email correspondence with various refugee NGOs, Tel Aviv, February and March 2014.

[75] Ibid.

[76] Letter from deputy attorney general to the Association for Civil Rights in Israel, March 6, 2014. Copy on file with Human Rights Watch.

[77] Legal Opinion from Knesset legal advisor to Knesset's Internal Affairs and Environmental Committee, "Re: The Prevention of Infiltration Bill (amendment no. 4 and temporary provisions)," November 25, 2013. Copy on file with Human Rights Watch.

[78] On conditions in Holot, see Hotline, "From One Prison to Another," pp. 15 – 22.

> of getting those problems because I remember how before I reached Israel the Bedouin tortured me in Sinai [on my way to Israel] for ransom. They dripped molten plastic onto my back, beat me with sticks and whipped me with cables and I saw two other Eritreans tortured to death. And now I have been in prison for so long.
>
> I sleep in a room with nine other people in five bunk beds. We share one toilet and a basin in the corner of the room behind a small wall.
>
> It is very cold inside. We don't have a heater in the bedroom, only the guards have heaters. We only get two thin blankets so I am cold at night. I claimed asylum in Saharonim in July 2013 but have not yet had a reply.[79]

A second Eritrean man said:

> Holot is the same as Saharonim. They even have the same guards. We have to report three times a day, like soldiers. We do not get enough food. We are always hungry. In the morning we only get one small cup of cheese for five people and only sometimes a little bread. Lunch and dinner is just rice and some fruit, no meat. On Saturdays they give us beans.[80]

In August, a Swiss court was reported to have ruled that an Eritrean who had claimed asylum in Israel and was ordered to report to Holot and then traveled to Switzerland should not be returned to Israel until his asylum claim in Switzerland had been heard because it appeared Israel's detention policy meant Israel would not provide adequate protection and it would be unreasonable to expect the person to seek protection there.[81]

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[79] Human Rights Watch interview with Eritrean man, Holot, January 10, 2014.

[80] Human Rights Watch interview with Eritrean man, Holot, January 10, 2014.

[81] Ilan Lior, "Switzerland grants entry to Eritrean asylum seeker fearing detention in Israel," *Haaretz*, August 28, 2014, http://www.haaretz.com/news/national/.premium-1.612827 (accessed August 28, 2014).

"Residency Orders" for Eritreans and Sudanese for Holot "Residency Center"

Under the December 2013 law, the authorities may issue "infiltrators" with "residency orders."[82] In May 2014, Hotline for Refugees and Migrants argued in Israel's High Court that the authorities could not issue residency orders without first giving the person concerned a hearing to determine whether they meet the criteria to be ordered to Holot and whether there are any arguments against such an order or for delaying it.[83] On May 26, 2014, the Interior Ministry announced that immigration clerks would hold such hearings.[84]

On May 29, 2014, the authorities published criteria stipulating the four groups of people the Interior Ministry can order to resident centers: (i) Eritreans who entered Israel before May 31, 2011; (ii) Sudanese who entered before May 31, 2011; (iii) "an infiltrator who a border control officer finds has been involved in criminal activities, and has not complied with conditions established by the Attorney General (a burden of proof will be required for the committed crime);" and (iv) "an infiltrator who has finished serving a criminal sentence for a crime of which he was convicted and if there is no [other] available place to keep him in custody."[85] No explanation was given for how the authorities identified the May 31, 2011 cut-off date.[86]

The December 2013 law states the authorities may detain only single men in "Residency Centers," while "families, women and children" may be detained there only once "special provisions" have been made.[87] The May 29, 2014 criteria state "infiltrators with families" and "women and children" will not be ordered to report to Holot.[88]

Five married men with children who tried to renew their conditional release permits after mid-December 2013 told Human Rights Watch that the Interior Ministry had ordered them

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[82] Law for the Prevention of Infiltration (Amendment No. 4), section 32(D). When the authorities issue the "residency order," they cancel the person's previous status, including conditional release permits. The "residency order" is considered "the lawful qualification for the infiltrator's residency in Israel." Ibid., section 32D(a).

[83] Human Rights watch email correspondence with Israeli refugee lawyer, Anat Ben Dor, May 29, 2014. PIBA submission to Israeli High Court, May 26, 2014. Copy on file with Human Rights Watch.

[84] Human Rights watch email correspondence with Israeli refugee lawyer, Anat Ben Dor, May 29, 2014.

[85] PIBA, "The Criteria for the invitation of infiltrators to the open residency center Holot," May 29, 2014, http://bit.ly/W7vZQt (accessed September 3, 2014). The May 2014 criteria were the second set of criteria issued for Holot. They replaced the February 10, 2014 criteria which provided that the cutoff date for Eritreans was December 31, 2008 and December 31, 2010 for Sudanese." Human Rights Watch email correspondent with former staffer from Amnesty-International-Israel, July 3, 2014.

[86] Human Rights Watch email exchange with former staffer from Amnesty International-Israel, July 3, 2014.

[87] Law for the Prevention of Infiltration (Amendment No. 4), section 32(V).

[88] PIBA, "The Criteria for the invitation of infiltrators to the open residency center 'Holot.'"

to Holot. When they said they could not leave their wives and children behind, officials told them they had to prove they were married and they were the children's father.[89] The interviewees all told Human Rights Watch they had no idea how to prove this and feared imminent separation from their families.

An Eritrean man living in Tel Aviv told Human Rights Watch that when officials ordered him to Holot and he said he was married with children, the officials simply said, "your wife and children will follow you."[90]

A second Eritrean man who tried to renew his permit at the Interior Ministry offices on Menachem Begin Street in Tel Aviv's business district said:

> I went to renew my permit on December 29. They gave me a summons to go to the Holot prison on January 29. I told them I have a wife and son. The man told me that they would stay in Tel Aviv while I had to go to Holot. Then they asked me whether I could prove that they were my wife and son. When I said yes, they said, 'You can try but don't bother coming back because we don't think you can prove it.[91]

In January 2014, Human Rights Watch spoke with a couple from Sudan who were living in Tel Aviv with their 18-month-old daughter. The man said:

> We have been here since 2007. I went to renew my permit on December 26, [2013] and they told me I had to go to Holot on February 1. I told them I had a family and showed them my daughter's birth certificate. They just ignored it and said I had to go to Holot. If they force me to live in Holot, I don't know how my wife and daughter will survive. They will have to live with me there too. But I know, they don't really want to put us in prison, they just want us to leave.[92]

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[89] Human Rights Watch interviews with Sudanese men, Tel Aviv, January 10, 11 and 13, 2014.

[90] Human Rights Watch interview with Eritrean man, Tel Aviv, January 11, 2014.

[91] Human Rights Watch interview with Eritrean man, Tel Aviv, January 15, 2014.

[92] Human Rights Watch interview with Sudanese couple, Tel Aviv, January 15, 2014.

Hotline said that from January 2014 until mid-August 2014 it has struggled to assist many of their married clients ordered to Holot to prove they were married and had children because the birth certificates of Eritrean and Sudanese children born in Israel only record the child's and the mother's names.[93] In addition, in Eritrean and Sudanese cultures, a married woman retains her maiden name and does not replace it with her husband's surname. Eritrean and Sudanese men therefore cannot use their wife's surname, as noted on the birth certificate, as evidence that they are their child's father. DNA testing is prohibitively expensive in Israel.[94] Hotline said the authorities accept certified copies of "Notification of Live Birth" notices as proof of fatherhood if the permit holder obtains a copy and submits it in evidence.[95] The notice is a hand-written document created by hospital staff if the father is present during his child's birth, and is held in hospital and Interior Ministry archives.[96]

Arrest and Detention of Conditional Release Permit Holders and Transfer to Holot

Under the December 2013 law, the authorities may arrest and detain people whose conditional release permits have expired.[97] The length of detention depends on the length of time the permit has been expired at the time of the arrest.[98] The law also said that at the end of the detention period, the detainee should be transferred to a "Residency Center."[99]

As described in more detail below, chaotic procedures for conditional release permit renewal have resulted in some people's permits expiring before they could renew them.

Since January 2014, there have been various police sweeps involving the arrest and detention of people with expired permits. In January 2014, police in Tel Aviv carried out sweeps, arresting people with expired permits and taking them to Givon prison in the town of Ramle, about 40 kilometers from Tel Aviv.[100] Sudanese community leaders also told Human Rights Watch in mid-January 2014 that they had spoken to friends and relatives

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[93] Human Rights Watch interview with Hotline, Tel Aviv, January 8, 2014. The same rule does not apply to married Israeli citizens. Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben Dor, May 29, 2014.

[94] Ibid.

[95] Human Rights Watch email correspondence with Hotline, July 30, 2014.

[96] Ibid.

[97] Amendment No. 4, section 32(T)(c).

[98] Ibid.

[99] Amendment No. 4, section 32(T)(i).

[100] Human Rights Watch interview with lawyer working for Hotline, Tel Aviv, January 17, 2014.

arrested for having expired permits and who said they were held in Givon prison for two weeks before being taken to the Saharonim Detention Center.[101]

In January 2014, Human Rights Watch spoke by phone with two detained men arrested after they tried and failed to renew their permits. A Sudanese man detained in Givon prison told Human Rights Watch:

> I was living in Natanya and went to the Interior Ministry just before my permit expired on October 23 [2013]. Twice I queued for hours and couldn't reach the front of the queue before the office closed. The third time I queued all day and finally made it. Then they told me to go to Haifa so I traveled there. But the officials there said I had to go to Tel Aviv or Beer Sheva. I took two more days off work to try there but both times I could not get to the front of the queue. I could not take any more days off work for fear of losing my job.
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> Finally the immigration police came to my home on January 1 [2014] and arrested me for having an expired permit. They took me to Haifa and then they took me to Givon prison. They haven't told me what they plan to do with me and I have not been to any court. Some of the others I have been held with who were arrested for expired permits have been taken to Saharonim.[102]

A 24-year-old Eritrean said he struggled at various times in 2013 to renew his permit and then gave up, leading to his arrest and detention:

> My permit expired in April 2013 and I lost it just before I was supposed to renew it. I went to the Interior Ministry offices in Petach Tikva [a town east of Tel Aviv] to get a new one but they told me to go to the office in Holon [a town south of Tel Aviv]. After about two months they interviewed me and then told me I had to go back to Petach Tikva. So I went back there but they wouldn't talk to me. I tried various times to get in but they would not let me

[101] Human Rights Watch interviews with Sudanese community leaders, Tel Aviv, January 13 and 16, 2014.

[102] Human Rights Watch telephone interview with detained Sudanese man, January 16, 2014.

> in. Each time I went to the office I had to take time off work and my boss said he would fire me if I kept on taking time off. So I gave up. The immigration police finally arrested me on December 23 for not having a permit and took me to Givon.
>
> I am still here but they have taken many others they arrested because of permit problems from here to Saharonim prison. They told me I would go to prison for one year because I did not have a valid permit and was working. Then last week they said I could stay out of prison if I agreed to go back to Eritrea or a different country. I am afraid of going back to Eritrea.[103]

Seven Eritreans and Sudanese told Human Rights Watch that after they had tried and failed to renew their permits in time, they hardly left their homes for fear of arrest until the date on which they had been given an appointment to obtain a new permit.[104]

For example, a 33-year-old Eritrean man said that on December 24, 2013, the day his permit was due to expire, he went to the Interior Ministry offices in Tel Aviv's Bnei Brak district to renew it but could not get to the front of the long queue there. He said he then tried every Sunday and Tuesday until he finally succeeded on January 12. He was given an appointment for January 23 and said that until then he was trying to avoid leaving his home for fear of arrest by immigration police.[105]

Human Rights Watch also spoke with staff at a refugee and asylum seeker charity which said dozens of their clients told them that after they had tried and failed to renew their permits, they stayed indoors too afraid to walk the streets out of fear of arrest.[106]

A lawyer working with detained Eritreans and Sudanese also told Human Rights Watch in mid-January 2014 that some of her clients had been arrested and detained for unlawful presence in Israel simply because they had only a photocopy of their permit with them at the time of arrest, even though the law does not require them to carry an original copy with

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[103] Human Rights Watch telephone interview with detained Eritrean man, January 17, 2014.

[104] Human Rights Watch interviews with Eritrean and Sudanese, Tel Aviv, January 7, 9, 10 and 14, 2014.

[105] Human Rights Watch interview with Eritrean man, Tel Aviv, January 17, 2014.

[106] Human Rights Watch interview with staff member at ASSAF, Tel Aviv, January 9, 2014.

them.[107] She said that many conditional release permit holders carry copies of their permit and keep the original in a safe place.[108]

According to the NGO Hotline, around March 20, 2014 the authorities stopped arresting people with expired conditional release permits due to the number of people unable to renew them in time as a result of the chaotic renewal procedures.[109] Arrests of people with expired conditional release permits resumed again in early May 2014.[110]

International Law on Immigration Detention

The requirement for people living in Holot to register three times a day and remain inside the center at night amounts in practice to detention. The UN Human Rights Committee has suggested that detention occurs whenever someone is confined to a "specific, circumscribed location."[111] The UN Working Group on Arbitrary Detention has said that detention is "the act of confining a person to a certain place … and under restraints which prevent him from living with his family or carrying out his normal occupational or social activities."[112]

Israel is bound by the International Covenant on Civil and Political Rights (ICCPR) which states that "no one shall be subjected to arbitrary arrest or detention."[113] In order not to be considered arbitrary under international law, detention should comply with four criteria.

First, a person should not be detained under a general blanket immigration detention policy, so the state must justify the detention of each and every detainee on an individual basis.[114] Second, detention must be for a clear purpose, such as facilitating

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[107] Human Rights Watch interview with lawyer working at Hotline, Tel Aviv, January 17, 2014; Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben Dor, May 29, 2014.

[108] Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben Dor, May 29, 2014.

[109] Human Rights Watch email correspondence with UNHCR-Tel Aviv, July 30, 2014.

[110] Human Rights Watch email correspondence with Hotline, August 15, 2014.

[111] UN Human Rights Committee, Decision: *González del Río v. Peru*, CCPR/C/46/D/263/1987, http://www1.umn.edu/humanrts/undocs/html/263-1987.html (accessed August 11, 2014), para. 5.1.

[112] UN Working Group on Arbitrary Detention, "Compilation of Deliberations," October 17, 2013, http://www.ohchr.org/Documents/Issues/Detention/CompilationWGADDeliberation.pdf (accessed July 11, 2014), p. 6.

[113] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Israel on October 3, 1991, art. 9.

[114] UN Human Rights Committee, Decision: *A v. Australia*, CCPR/C/59/D/560/1993, April 30, 1997, http://www1.umn.edu/humanrts/undocs/html/vws560.html (accessed August 11, 2014), para. 9.4.

deportation proceedings.[115] Third, the length of detention must be strictly necessary and proportionate to achieve the stated aim, including there being no alternative, less restrictive means available to achieve the aim.[116] Fourth, a detainee is entitled to have a court review "without delay" the lawfulness of the detention.[117] If the detention is unlawful, the court must order the person to be released.[118] If the detention is initially lawful, the detainee is entitled to a "periodic" review of its lawfulness.[119]

If a state detains a person for deportation purposes and there is no realistic prospect of removing or deporting the person, his or her detention amounts to indefinite detention which is arbitrary and therefore unlawful.[120] Indefinite detention may also constitute inhuman and degrading treatment in breach of Israel's obligations under the ICCPR and the UN Convention Against Torture.[121]

The UN Working Group on Arbitrary Detention has also developed principles for determining when the deprivation of liberty of asylum seekers in "places of custody situated in border areas" and "police premises" is arbitrary.[122] They state detention "must be founded on criteria of legality established by the law," that detainees must "be brought

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[115] UN General Assembly, Report of the Working Group on Arbitrary Detention, A/HRC/10/21, February 16, 2009, http://bit.ly/1unqf1Z (accessed August 11, 2014), para 67; European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos. 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998 respectively, article 5(f).

[116] UN Human Rights Committee: Decision: *C. v. Australia*, CCPR/C/76/D/900/1999, October 28, 2002, http://bit.ly/1unqeer (accessed August 11, 2014), paras. 4.23 and 8.2. The Israeli High Court has also said that the state "must not arrest a person against whom a deportation order has been issued for a period that exceeds that which is necessary to fulfil the purpose of the underlying detention." HCJ 4702/94, *Al Tai and others v. Minister of Interior*, September 11, 1995, PD 49(3) 843, http://bit.ly/1sBExxn (accessed August 13, 2014), para 13.

[117] ICCPR, art. 9(4).

[118] Ibid.

[119] UN Human Rights Committee, Decision: *A v. Australia*, para. 9.4

[120] UN Human Rights Committee, "Concluding Observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland, U.N. Doc.," CCPR/CO/73/UK (2001), October 29, 2001, http://bit.ly/Z850GF (accessed August 11, 2014), paragraph. 16; see also, UN Human Rights Committee, Decision: *C. v. Australia*, para. 8.2.

[121] In *C. v Australia*, the detainee held in indefinite immigration custody suffered psychological trauma a result of his prolonged detention, and the Human Rights Committee determined that Article 7 of the ICCPR had been violated. Ibid., para 8.4. In 2006, the Committee Against Torture (CAT) concluded that "detaining persons indefinitely without charge constitutes per se a violation of the [Torture] Convention." CAT, "Consideration of Reports Submitted by State Parties under Article 19 of the Convention," CAT/C/USA/CO/2, July 25, 2006, http://www.refworld.org/docid/453776c60.html (accessed August 11, 2014). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Israeli October 3, 1991, art. 3.

[122] United Nations Commission on Human Rights, "Civil and Political Rights, Including Questions of: Torture and Detention, Report of the Working Group on Arbitrary Detention," E/CN.4/2000/4, December 28, 1999, Annex II, Deliberation No. 5, "Situation Regarding Immigrants and Asylum Seekers," http://bit.ly/W7Jf87 (accessed September 3, 2014).

promptly before a judge or other authority," and that detention may "in no case be of excessive length."[123]

Drawing on international law, UNHCR has issued guidelines on the detention of asylum seekers.[124] Asylum seekers should be detained only "as a last resort … with liberty being the default position."[125] Detention should only be used as a strictly necessary and proportionate measure to achieve a legitimate legal purpose.[126] Brief detention is permitted to establish a person's identity and longer periods are permitted if detention is the only way to achieve broader aims such as protecting national security or public health.[127] Finally, the guidelines state that deterring others from seeking asylum, or dissuading those who have already lodged their claims from pursuing them, is not a legitimate purpose to justify detention.[128]

Yet the explanatory notes accompanying the December 2013 amendments to the Anti-Infiltration Law show its purpose clearly to be deterrence and other illegitimate reasons, such as keeping cities free of this population:

> The special legal arrangement applying to undocumented infiltrators … was intended … to influence the behavior of potential infiltrators prior to their entering Israel and to nullify the incentive for them to enter the state's territory, and to prevent them from settling in Israel in general and in the city centers in particular.[129]

Confining Eritreans and Sudanese to Holot breaches the international law prohibition on arbitrary detention. First, the confinement there is detention because Holot is a specific

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[123] Ibid, p. 30.

[124] UNHCR, Detention Guidelines: Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012 (Geneva: United Nations High Commissioner for Refugees, 2012), http://www.unhcr.org/505b10ee9.html (accessed May 24, 2014).

[125] Ibid., para. 14.

[126] Ibid., para. 34.

[127] Ibid., paras. 21 - 30.

[128] Ibid., para. 32.

[129] PIBA, "Explanatory Notes to the Law for the Prevention of Infiltration (Offenses and Jurisdictions) (Amendment No. 4 and Temporary Order) 2013," November 20, 2013, http://www.nevo.co.il/Law_word/law15/memshala-817.pdf (accessed June 17, 2014), p. 1. Unofficial English translation on file with Human Rights Watch. The Explanatory Notes to the January 2012 amendments to the Anti-Infiltration Law said "the expectation is that the length of … detention will curb the infiltration phenomenon… a phenomenon which has to be prevented … in order to protect … the state's sovereignty."

circumscribed location and people held there are prevented from carrying out their normal occupational and social activities. Second, people are detained there under a blanket immigration detention policy under the 2013 Amendments to the Anti-Infiltration Law and related procedures authorizing the detention of Eritreans and Sudanese who entered Israel before May 31, 2011. Third, detainees are held for no lawful purpose such as facilitating deportation (which is not possible in the case of Eritreans and Sudanese). Fourth, detainees are held indefinitely, which is automatically unlawful. Fifth, there is no effective remedy to challenge the decision to detain.[130]

Like the January 2012 law, the December 2013 law also violates international refugee law by not distinguishing between asylum seekers from others who enter irregularly, in effect punishing asylum seekers for their irregular entry.[131]

[130] The hearings introduced by the Interior Ministry on May 26, 2014, referred to above, only allow people ordered to report to Holot to argue that they do not meet the ministry's criteria stipulating who can be ordered to Holot. This does not allow the person to argue that the criteria themselves breach their right under Israeli and international law not to be arbitrarily detained. Permit holders who can afford to pay lawyers may challenge the decision to detain but almost none can afford to pay legal fees. Human Rights Watch email correspondence with Hotline for Refugees, August 18, 2014.

[131] Article 31 of the Refugee Convention provides that states may not impose penalties on account of illegal entry.

III. Refoulement to Eritrea and Sudan and Returns to Third Countries

Eritreans and Sudanese who leave Israel from detention and those who leave after being ordered to report to Holot should be considered victims of refoulement because their decision to leave Israel and go home is not a matter of choice if the only alternative is indefinite detention. Some Sudanese returning home in 2014 have faced persecution and other harm on return.

Israel's policy of facilitating the departure of Eritreans and Sudanese to third countries, such as Ethiopia, Rwanda and Uganda, also puts it at risk of violating its international obligations. Without legally binding formalized transfer agreements with these countries including assurances that they will have access to full and fair asylum procedures, there is a risk that Eritreans and Sudanese transferred to these countries could also be victims of refoulement.

International Law on Refoulement

International law prohibits refoulement, the forcible return of refugees or asylum seekers to places where they face a threat to life or freedom on account of race, religion, nationality, membership of a particular social group, or political opinion and the return of anyone to a place where they would be at real risk of torture or cruel, inhuman, or degrading treatment.[132]

The 1951 Refugee Convention specifically bars the return "in any manner whatsoever" to places where a person would face a serious risk of persecution.[133] Refoulement can occur as a result of a chain deportation in which refugees or asylum seekers are sent to third countries—including transit countries such as Egypt, Jordan and Turkey—that predictably will not respect their rights as asylum seekers but instead send them back to places where they risk harm such as Eritrea and Sudan.

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[132] See Refugee Convention, art. 33(1) and Convention against Torture, art. 3. The Israeli High Court has ruled that Israel is bound by its human rights obligations not to return anyone to harm. *Al-Tai v. Minister of the Interior*, HCJ 4702/94, Piskei Din 49(3). However, as noted below in section 5, Israeli law does not provide for "complementary protection" status based on human rights grounds.

[133] Refugee Convention, art. 33(1).

On February 25, 2013, UNHCR in Tel Aviv criticized Israel's pressure on detained Eritreans, stating that "agreement to return to Eritrea under a jail ultimatum cannot be considered voluntary by any criterion."[134] This position reflects UNHCR's Handbook on Voluntary Repatriation which states that if refugees' "rights are not recognized, if they are subjected to pressures and restrictions and confined to closed camps, they may choose to return, but this is not an act of free will."[135]

Jurisprudence in other jurisdictions supports this interpretation of refoulement. In 2012, the European Court of Human Rights concluded that an Iraqi man detained in Belgium who was told his choice was to remain indefinitely in Belgian prison, return to Iraq or be sent to a third country did not take his decision to return to Iraq "under conditions allowing for freely-given consent," which meant Belgium had in fact forcibly returned him to Iraq in breach of its obligations not to return him to a place where he faced a real risk of torture or inhuman or degrading treatment or punishment.[136]

Courts in the United Kingdom and United States have also ruled that in some cases a state's action may give asylum seekers no choice but to return to their country. In the UK, the Divisional Court ruled that "conditions might be imposed [that are] so hostile to the continued presence of asylum seekers that a decision to leave in order to escape those conditions amount to constructive deportation."[137]

In the US, the District Court for Central California found in a class action suit that Salvadoran nationals' widespread acceptance of voluntary departure agreements to El Salvador and to forfeit their claims for asylum was "due in large part to … deliberately executed … coercive effects" of the immigration authorities' practices and procedures, which included telling them "that if they apply for asylum they will remain in detention for a long time."[138] The court prohibited US immigration officials from "employ[ing] threats,

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[134] Talila Nesher, "UN refugee official slams Israel over Eritrean repatriation," *Haaretz*, February 25, 2013, http://bit.ly/1A51nfW (accessed July 16, 2014).

[135] UNHCR, Handbook on Voluntary Repatriation: International Protection (Geneva: UN High Commissioner for Refugees, 1996), http://www.unhcr.org/3bfe68d32.html (accessed August 14, 2014).

[136] European Court of Human Rights, *M.S. v. Belgium*, no. 50012/08, §§102, 104, 31 January 2012, http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108834 (accessed August 14, 2014).

[137] *R v. Secretary of State for Social Security, Ex parte B and Joint Council for the Welfare of Immigrants*, QBCOF 96/0462/D, QBCOF 96/0461 and 0462/D, United Kingdom: Court of Appeal (England and Wales), 21 June 1996, http://www.refworld.org/docid/3ae6b72ao.html (accessed August 13, 2014).

[138] *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488, 1494-95 (1988).

misrepresentation, subterfuge or other forms of coercion, or in any other way attempt to persuade or dissuade class members when informing them of the availability of voluntary departure." The court said that this included "[t]elling [applicants] that if they apply for asylum they will remain in detention for a long period of time" and "[m]aking daily announcements at detention facilities of the availability of voluntary departure."[139]

Pressure Coercing Eritreans and Sudanese into Leaving

Between January 1, 2013 and July 1, 2014, at least 6,750 Eritreans and Sudanese left Israel, according to the Israeli authorities.[140] The vast majority were Sudanese who left from Israel's cities and returned to Sudan.[141] In March 2014, the authorities said that 367 of those who had left were Eritreans who returned home.[142]

UNHCR and Hotline say there are no statistics available on how many of those leaving had received an order to report to Holot.[143] However, many of Hotline's clients who agreed to leave Israel in 2014 told Hotline they were leaving because they had received an order to report to Holot or because they feared they were about to receive such an order.[144]

In late 2012 and early 2013, the authorities pressured Eritrean and Sudanese detained in the Saharonim Detention Center to leave Israel, threatening them with years in detention.[145] Hundreds of detained Sudanese agreed to leave in December 2012 and early 2013.[146]

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[139] Ibid., p. 1511.

[140] In 2013, 1,687 Sudanese and 268 Eritreans "voluntarily returned" to their countries. PIBA, "Statistics on foreigners in Israel for 2013," January 2014, http://piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/563343n80.pdf (accessed June 17, 2014). On July 1, 2014, the PIBA said that 4,795 "infiltrators" had left Israel since January 1, 2014. PIBA, "217 infiltrators left the country voluntarily in June." There are no statistics available for the number who left in 2012.

[141] On March 26, 2014, Israel's interior minister said that most of the 3,966 Africans who had left Israel since January 1, 2014 were Sudanese and that all but 81 had returned to their home countries. Ilan Lior, "Israel's interior minister seeks to extend grants to leaving migrants," *Haaretz*, March 26, 2014, http://www.haaretz.com/mobile/.premium-1.582154 (accessed March 27, 2014). On March 26, 2014, the Interior Ministry said 95 per cent of those leaving Israel in 2014 had left from the cities. Protocol of presentation by interior minister to Knesset Interior Committee, March 26, 2014, on file with Human Rights Watch.

[142] Hotline, "'From One Prison to Another,'" p. 20.

[143] Human Rights Watch email correspondence with UNHCR, August 8, 2014 and Hotline, July 30, 2014.

[144] Human Rights Watch email correspondence with Hotline, July 30, 2014.

[145] Human Rights Watch interviews with UNHCR and Hotline, February and March 2013; "Israel: Detained Asylum Seekers Pressured to Leave," Human Rights Watch news release, March 13, 2013.

[146] Human Rights Watch interviews with UNHCR and Hotline, February and March 2013. "Israel: Detained Asylum Seekers Pressured to Leave." In May 2013, government lawyers said that between June 2012 and May 22, 2013, 534 Sudanese returned to Sudan from Israeli detention. State response to petitioners in High Court proceedings HCJ 7146, "Re: Bagatz 7146/12 providing additional information," May 22, 2013, on file with Human Rights Watch.

Detainees told Hotline staff that immigration officials said they "should go back to [their] country and that anyone who did not agree to leave would stay in prison for three years."[147]

UNHCR said that in July 2013 its staff spoke with seven Sudanese men, including some from Darfur, who were detained at the Ktzi'ot Detention Center who said they had agreed to return to Sudan because "they preferred to take a risk and not to stay indefinitely" in detention in Israel.[148] The same month, UNHCR also spoke with about 14 Eritreans detained for many months in the Saharonim Detention Center who told UNHCR that they signed papers agreeing to return to Eritrea and then left Israel for Eritrea via Istanbul. Some in the group told UNHCR they would "do anything to get out of detention."[149]

The Fate of Eritreans and Sudanese Returning Home

Human Rights Watch has been unable to obtain information about the fate of any of the Eritreans returning to Eritrea from Israel but has documented torture of Eritreans returned to their country in 2012 from other countries.[150] Amnesty International has also documented similar abuses.[151]

Some Sudanese who returned to Sudan have faced persecution. One Sudanese returnee told Human Rights Watch security officials interrogated and tortured him on his return to Sudan about his membership in Darfuri opposition groups while two others said they were interrogated and held for weeks at times in solitary confinement. One man was charged with treason for traveling to Israel and one returnee's relative said his brother disappeared on return to Khartoum. Four others said they were interrogated and then released.
Many, if not most, of the Sudanese entering Israel through Egypt's Sinai peninsula entered Egypt through official border posts and therefore have Egyptian entry stamps in their passports.[152] However, when they crossed into Israel without passing through an official border post they did not get Egyptian exit stamps or Israeli entry stamps.[153]

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[147] Human Rights Watch telephone interview with Hotline, February 2013; "Israel: New Pressure on Asylum Seekers to Leave," Human Rights Watch news release, July 23, 2013.

[148] Human Rights Watch telephone interview with UNHCR-Tel Aviv February 2013; "Israel: New Pressure on Asylum Seekers to Leave," Human Rights Watch news release, July 23, 2013.

[149] Ibid.

[150] Human Rights Watch, *World Report 2014* (New York: Human Rights Watch, 2014), http://bit.ly/1ruTeR9, p.115.

[151] Amnesty International, "Eritrea: 20 Years of Independence but Still No Freedom," May 2013, http://bit.ly/1uzgpJn (accessed August 13, 2014).

[152] Human Rights Watch interview with Hotline, Tel Aviv, January 8, 2014.

[153] Ibid.

When those same people agreed to return to Sudan from Israel in 2013 and 2014, they flew back via Egypt, Jordan or Turkey.[154] While in the Cairo, Amman or Istanbul airports, they do not leave the transit area, because those countries have no obligation to allow Sudanese to enter, which means they are forced to travel onward to Sudan and therefore do not get any additional entry or exit stamps.[155]

As a result, when the Sudanese authorities in Khartoum review their passports, they are able to deduce from the presence of an Egyptian entry stamp but the absence of an Egyptian exit stamp—given to anyone leaving Egypt through Cairo airport—that the passport holder has been to Israel. [156]

A 36-year-old Sudanese man from Darfur who returned to Khartoum from Israel in August 2013 described how National Security officials tortured him when he returned to Khartoum:

> I was in Israel for almost three years but I left because the police arrested me in October 2012, took me to Saharonim and said I would never get out. They put me on a plane to Cairo where I waited for four hours and then I flew to Khartoum.
>
> Security officers checked my passport at passport control. They asked me why I only had an entry stamp for Egypt and no exit stamp. I didn't answer. Then they asked me why I had been to Israel. And then they said 'you are black, so why are you coming back to Sudan?'
>
> They took me to another room and some other officers from Interpol asked me questions about Israel. They asked me for the names of Sudanese people in Israel who support the Sudanese Liberation Army (SLA). Then they read a list of names and said I should tell them what each of the people was doing exactly to try and overthrow the authorities in Khartoum.

[154] Human Rights Watch email correspondence with Amnesty International, July 23, 2014.
[155] Human Rights Watch telephone interviews with Sudanese who returned to Khartoum from Israel, January - June 2014.
[156] Ibid.

> Then they took me to National Security Intelligence just outside the airport where they held me for four months. They tortured me during the first ten days. They beat me with big sticks and poured boiling water over me and gave me electric shocks. They shouted abuse at me, saying I was against the government because I was from Darfur and had been to Israel. They asked me repeatedly for the names of Sudanese people in Israel plotting against Khartoum. I think they stopped torturing me when they realized I had nothing to tell them.
>
> After four months they released me. They said they would charge me with going to Israel but they have still not given me a court date. For the past four weeks I have had to report every few days to National Security to show them I have not left Khartoum.[157]

A 32 year-old man from Darfur who returned to Khartoum from Israel in February 2014 described his eight-week-long detention and interrogation on returning to Khartoum:

> After almost six years in Israel, I decided to leave in February [2014] after the government said they would detain any Sudanese person in Israel who had been there for more than three years. I knew that they would detain me for an unlimited amount of time and that is a form of mental and physical imprisonment.
>
> When I arrived in Khartoum, security officials held 125 of us coming from Israel on the same flight and then handed us over to National Security who took us to their building in Khartoum's Sahafa District. There they interrogated me about my political history in Darfur and my support for one of the groups opposing the government there. They knew I had participated in public protests in Israel and asked me about that. The next day they took me to another National Security office near Khartoum's Shandi bus station, which the officers there called "the hotel." There they threatened to beat me if I didn't tell the truth.

[157] Human Rights Watch telephone interview with Sudanese man, January 17, 2014.

> On the third day, they took me to Kober prison in Khartoum and put me in a cell with 28 other people who had also come back from Israel. They held me there for eight weeks including about 20 days in solitary confinement. National Security interrogated me many times in the building they called "the hotel." It was always the same questions about my political views on the conflict in Darfur, which groups I supported there and why I had gone to Israel.
>
> At the end of the eight weeks they took me to the prosecutor who charged me with treason for going to Israel. He then released me on bail after my family sold all their land and paid $ 40,000. They confiscated my passport and banned me from travelling for five years.[158]

Human Rights Watch has previously documented torture in National Security's political headquarters located near the Shandi bus station in Khartoum's Bahri district.[159]

Human Rights Watch also spoke with a man in Khartoum whose brother, from Sudan's Nuba Mountains, spent a number of years in Israel. The man said his brother called him in March 2014 to tell him he was leaving Israel. On the day he left Israel, one of his friends, also in Israel, called the man in Khartoum to say his brother had boarded the flight and that he would land in Khartoum that evening. Since that time, neither the man's brother nor his friend in Israel has had any news.[160]

In January 2014, the Israeli paper *Haaretz* reported on the fate of relatives of a Sudanese man who returned to Sudan from Israel with his wife and children after he was summoned to the Holot detention center. He told the paper that while he was away from his home in Khartoum, security forces "beat and intimidated" his mother and siblings and that he and his family went into hiding and that he eventually left Sudan again with his wife and children, fearing for their lives.[161]

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[158] Human Rights Watch telephone interview with Sudanese man, May 23, 2014.

[159] Human Rights Watch, *"We Stood, They Opened Fire:" Killings and Arrests by Sudan's Security Forces During the September Protests* (New York: Human Rights Watch, 2014), http://bit.ly/1tvtbLR, p.20.

[160] Human Rights Watch telephone interview with Sudanese man, July 15, 2014.

[161] Maeve McClenaghan, "Back in Sudan, family who left Israel faces tyranny: They grilled my wife, beat my mom," *Haaretz*, January 7, 2014, http://www.haaretz.com/news/diplomacy-defense/.premium-1.567312 (accessed March 5, 2014).

Human Rights Watch also spoke with four other Sudanese who said security forces interrogated them on their return to Khartoum about their time in Israel and were then released within 72 hours.[162]

Official Procedure to Document Voluntariness of Detainees' Decision to Return Home

Detainees agreeing to leave are taken straight from their place of detention to the airport. The Israeli authorities pay for the ticket.[163]

Until late June 2013, Israel had no formal procedure to document what the authorities said were voluntary decisions by Eritreans and Sudanese to leave Israel for their countries of origin.[164]

At the end of June 2013, the authorities adopted a procedure instructing officials on how to document what it said was the "free will" of detained "infiltrators … in their requests" to leave Israel and return to their home countries. [165]

The procedures authorize Border Control officers to record video interviews in which they ask detainees requesting to leave Israel "open ended questions" to clarify whether they are "aware of the situation" in their countries of origin. They instruct officers to explain to detainees who claim asylum that they may "freeze" their asylum claims and agree in writing to return to the country of origin. An official who believes the detainee's request does not "express free will" can determine that the detainee should remain in detention. The procedure states that a detainee can retract a decision to return home at any point, but that the person will be returned to detention.[166]

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[162] Human Rights Watch telephone interviews with Sudanese, June 12, 20 and 21, 2014 and July 6 and 14, 2014.

[163] Human Rights Watch interview with Hotline, January 8, 2014.

[164] Human Rights Watch email correspondence with Hotline, August 8, 2014.

[165] Interior Ministry, "Procedure for documenting the free will of infiltrators, from Eritrea and The Republic of Sudan, who are in detention in their requests to depart from Israel to their country," June 27, 2013, on file with Human Rights Watch. In his June 27, 2013 cover letter to the interior minister accompanying the procedures, the attorney general said the procedures do not apply to requests to leave Israel for countries other than detainees' home countries, although he requests that "it should be considered" to apply the procedures to such requests. Cover letter on file with Human Rights Watch.

[166] Ibid.

According to a Sudanese community leader, in early 2014, Interior Ministry officials in Tel Aviv encouraged Sudanese agreeing to return to Khartoum to say on camera that they did not fear any problems in Khartoum.[167]

In November 2013, the Interior Ministry produced a pamphlet explaining what conditional release permit holders should do if they want to sign up to leave Israel and receive $ 3,500 in return.[168] This pamphlet has been distributed in Interior Ministry offices dealing with conditional permit renewal procedures and in detention centers.[169] Permit holders agreeing to leave Israel under this procedure say they received the money and the authorities also paid for their flight.[170]

Leaving Israel for Rwanda, Uganda, and Ethiopia

Since 2008, Israeli officials have claimed they were at the point of signing agreements with one or more African countries regulating the transfer of Eritreans and Sudanese from Israel.[171] During March 2014 Israeli High Court proceedings, the State Prosecutor's Office told the court Israel had "reached … and begun to implement … two [transfer] agreements" but that the two countries involved had requested Israel not disclose their names.[172] During the same proceedings, state lawyers said that as of early March 2014, 72 Eritreans and Sudanese had flown from Israel to those two countries.[173]

In addition to the 72 people referred to by Israeli state lawyers, Human Rights Watch has documented how nine Eritreans and two Sudanese have agreed under pressure to fly to Rwanda and Uganda and, in one case, to Ethiopia. As of mid-August 2014, none of these countries have confirmed publicly that they have any agreement with Israel governing the transfer of Eritreans or Sudanese or any other sub-Saharan nationals from Israel. In

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[167] Human Rights Watch interview with Sudanese community leader, Tel Aviv, January 17, 2014.

[168] Human Rights Watch email correspondence with UNHCR Tel Aviv, July 30, 2014; PIBA Voluntary Return Assistance Unit, Untitled pamphlet, on file with Human Rights Watch. Between 2008 and late 2013, the authorities paid between $1000 and $1500 to "infiltrators" agreeing to leave Israel. Yonatan Berman, "Refugees as Human Waste," Ynet, June 15, 2008, http://www.ynet.co.il/articles/0,7340,L-3555464,00.html (accessed August 13, 2014).

[169] Human Rights Watch email correspondence with former Amnesty International-Israel staffer, July 3, 2014.

[170] Human Rights Watch interviews with Sudanese, Khartoum, May and June 2014.

[171] Yonatan Berman, "Refugees as Human Waste," *Ynet.*

[172] Ilan Lior, "Two African countries taking in asylum seekers leaving Israel," *Haaretz*, March 12, 2014, http://www.haaretz.com/news/national/.premium-1.579270 (accessed March 18, 2014).

[173] Ibid.

February 2014, a senior Uganda official denied any such agreement existed.[174] In two cases, Uganda and Ethiopia have refused an Eritrean and a Sudanese access to their territory.[175]

Absent agreements that comply with recent UNHCR guidance governing states' transfer arrangements of asylum seekers, there is no guarantee receiving countries will admit foreign nationals and no assurance those countries will not return them to their home countries where they risk being persecuted.[176] Israel should therefore not coerce or compel Eritreans and Sudanese to leave Israel for such countries and should agree to readmit any who are rejected upon arrival.

Leaving Israel for Rwanda

As of mid-August 2014, at least nine Eritreans and one Sudanese man have agreed under pressure to leave Israel and be flown to Rwanda.

In late May 2014, Human Rights Watch met with nine Eritreans and a Sudanese national in the Rwandan capital, Kigali, who said they had flown from Israel to Kigali earlier in the month and that on arrival they were simply allowed into the country but given no permit to stay. As of early August, they had not been given any secure immigration status.[177]

Leaving Israel for Uganda

In August 2013, the Israeli newspaper *Haaretz* reported Israel was planning to transfer thousands of Eritreans and Sudanese to Uganda.[178] In mid-February 2014, *Haaretz* also reported seven Sudanese had flown from Israel to Uganda.[179] Later that month, Uganda's Deputy Minister for Relief and Disaster Preparedness said he had "no official information or otherwise" about any Eritreans and Sudanese from Israel flying to Uganda and that "if there is any such person here, he is here illegally and should be arrested immediately."[180]

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[174] See below.

[175] See below.

[176] See below for the UNHCR Guidelines.

[177] Human Rights Watch interviews with Eritreans and a Sudanese man, May 27 and July 31, 2014.

[178] Anshel Pfeffer and Ilan Lior, "Uganda will take in thousands of Israel's African migrants," *Haaretz*, August 29, 2013, http://www.haaretz.com/news/national/.premium-1.544269 (accessed August 11, 2014).

[179] Ilan Lior, "Israel secretly flying asylum seekers to Uganda," *Haaretz*, February 19, 2014, http://www.haaretz.com/news/national/1.575028 (accessed June 20, 2014).

[180] Gaaki Kigambo, "Uganda accused of receiving money from Israel for refugees," March 1, 2014, http://bit.ly/1q4t865 (accessed August 13, 2014).

On March 3, 2013, the Israeli NGO Hotline spoke by phone with an Eritrean man in Cairo who said he agreed to fly on February 28 from Israel to Uganda after Israeli officials refused to register his asylum claim and threatened to detain him for three years. He said the Ugandan authorities refused him entry and deported him to Cairo, where the authorities also refused him entry but said he could fly back to Israel where he faced further prolonged detention. After two days without sleep, the man refused and flew to Eritrea on March 6.[181]

Leaving Israel for Ethiopia

On May 1, 2014, a Sudanese registered asylum seeker agreed to leave Israel after he said Israel had promised him it would transfer him to a "safe country."[182] After arriving in Addis Ababa, he asked to leave the airport but the authorities refused to let him leave the transit zone for eight days or to allow UNHCR to visit him there.[183] On May 8, the Ethiopian authorities said his only option was to return to Israel and he agreed to board a flight for Tel Aviv from where the authorities took him to the Holot Detention Center.[184]

UNHCR Guidance Note on Agreements Governing Transfers of Asylum Seekers

In May 2013, UNHCR issued guidance on states' transfers of asylum seekers, which said asylum seekers should "ordinarily be processed in the territory of the State where they arrive."[185] Where states do not follow this general state practice and engage in transfers, UNHCR said transfer arrangements should be governed by a legally binding document that is challengeable in court.[186] The guidance also stated any such arrangement should respect a number of principles, failing which "the transfer would not be appropriate."[187] These principles include that the receiving state has a record of complying with its obligations under the Refugee Convention (if acceded to or ratified) and human rights

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[181] Human Rights Watch telephone interview with Hotline, March 2013; "Israel: Detained Asylum Seekers Pressured to Leave," Human Rights Watch news release, March 13, 2013; Lucy Pawle, "From Eritrea to Israel to Uganda to Egypt and back to Eritrea: army deserter faces death sentence after deportation debacle," *Independent*, March 8, 2013, http://ind.pn/1rgARAs (accessed July 16, 2014).

[182] Human Rights Watch telephone interview with Sudanese asylum seeker in Addis Ababa airport transit zone, May 7, 2014.

[183] Ibid.

[184] Ilan Lior, "Deported Sudanese asylum seeker involuntarily returned to Israel," *Haaretz*, May 11, 2014, http://www.haaretz.com/news/national/.premium-1.589908 (accessed July 16, 2014).

[185] UNHCR, "Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers," May 2013, http://www.refworld.org/docid/51af82794.html (accessed April 7, 2014).

[186] Ibid. See also, UNHCR, "UNHCR Position on Readmission Agreements, 'Protection Elsewhere' and Asylum Policy," August 1, 1994, http://www.refworld.org/docid/3ae6b31cb8.html (accessed July 23, 2014).

[187] UNHCR, "Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers," May 2013.

treaties and that each individual's case will be examined before the transfer takes place to identify any potential vulnerabilities.[188]

When Israel essentially sends Eritreans and Sudanese to third countries without full assurances from them on admission, access to full and fair asylum procedures, dignified treatment, and respect for nonrefoulement, it is acting contrary to general state practice and UNHCR guidance. It could lawfully remove Eritrean and Sudanese asylum seekers to third countries, but only with such assurances, preferably through a legally binding formalized transfer agreement that is challengeable and enforceable in a court of law.

[188] Ibid.

IV. Precarious Legal Status

The policy of coercing Eritreans and Sudanese to return home by arbitrarily and indefinitely detaining thousands of them is supported by a dual strategy to avoid granting potentially thousands of refugees their rights under international law, including freedom of movement. The first prong of the strategy, set out in this Chapter, is a policy that suspends deportations of Eritreans and Sudanese without giving them a formalized protected status that would provide them rights and benefits, including clear work rights. The second prong is to deny them access to fair and efficient asylum procedures (Chapter V).

The Bare Minimum: "Temporary Non-Removal Policy"

Since 2001, Israel has pursued a policy under which tens of thousands of sub-Saharan nationals, including Eritreans and Sudanese, have been given little more than a basic right not to be deported to their home countries.[189] Initially, the authorities termed the policy "temporary protection" or "temporary group protection," in line with the internationally recognized terminology.[190] In February 2013, they dropped the word "protection" and labeled it a "temporary non-removal policy" or a "temporary policy of non-deportation."[191]

The Israeli authorities have never formally announced the non-removal policy for sub-Saharan nationals, or for any particular nationality. However, an examination of official statements show the authorities applied the non-deportation policy to sub-Saharan Africans from countries other than Eritrea and Sudan and then excluded them from it at various points between 2001 and 2012 before deporting them to their home countries.[192]

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[189] Sierra Leoneans were the first group to benefit from the status in 2001. Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben-Dor, May 18, 2014. For other nationalities, see above, note 2.

[190] In September 2009, the authorities referred to "temporary group protection" during legal proceedings. Hotline for Migrant Workers, "Until our Hearts are Completely Hardened: Asylum Procedures in Israel," March 2012, http://bit.ly/1rbvZOc (accessed April 10, 2104), p. 10. In December 2009, the Refugee Status Determination (RSD) Unit at the Interior Ministry referred to "temporary protection." Ibid., p. 9. In January 2011, the head of the PIBA also referred to Eritreans and Sudanese receiving "temporary protection." Ibid., p. 10. The authorities have also referred to it as a "temporary non-return" policy. Human Rights Watch email correspondence with Israeli refugee lawyer, Yonatan Berman, May 11, 2014.

[191] PIBA, "Know Your Rights And Obligations," February 2013, http://bit.ly/1Bbb5Qi; Israeli Ministry of the Interior legal memorandum, "Assessing Requests for Asylum by Eritrean Asylum Seekers," April 25, 2013, on file with Human Rights Watch.

[192] See above, section 1.

Starting in 2004, the policy was applied to Sudanese.[193] According to UNHCR, Eritreans have been covered by the policy from the moment they started to arrive in Israel in significant numbers in 2007.[194] In neither case did the authorities announce when and why they were applying the policy to Eritreans and Sudanese. In September 2009, state lawyers said Eritreans and Sudanese benefit from "temporary protection" but did not say why.[195]

However, between 2011 and 2013, officials made a series of statements indicating Eritreans are not deported due to concerns about Eritrea's human rights record and Sudanese are not deported due to a lack of diplomatic relations with Khartoum.

In October 2011, Danny Ayalon, then deputy foreign minister, said "at this moment it is impossible to return people to Eritrea because it has a regime that is defined by the entire international community as a regime that does not maintain human rights, and whoever is returned there may be subjected to danger including to their lives."[196]

An unpublished 2013 Interior Ministry legal opinion stated: "Eritrea's severe treatment and means of punishment towards draft evaders and deserters … were part of the reasons [sic] which led to Israel's temporary non-deportation policy towards Eritrean citizens… Due to the very harsh and severe treatment of Eritrea towards [military] service evaders, the State of Israel has a policy of non-deportation to Eritrea…"[197]

During court proceedings relating to the constitutionality of the January 2012 and December 2013 amendments to the Anti-Infiltration Law, government lawyers told the High Court that Eritreans were allowed to stay in Israel "based on non refoulement grounds even though the vast majority are not refugees."[198]

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[193] After Israel returned 10 Sudanese asylum seekers to Egypt in 2004 and Egypt threatened to deport them to Sudan, UNHCR asked Israel not to deport any more Sudanese to Egypt. Although since then Israel has pushed Sudanese, among others, back at its border with Egypt, it has not deported Sudanese to Egypt. Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben-Dor, May 18, 2014. On Israel's pushbacks at the Egyptian border, see section 1.

[194] Some Eritreans arrived as early as 1997 but significant numbers only started arriving in 2007. Human Rights Watch email correspondence with UNHCR, June 22, 2014.

[195] State submission to High Court of Justice, September 17, 2009, HCJ 7302/07; Human Rights Watch email exchange with Israeli refugee lawyer, Yonatan Berman, May 11, 2014.

[196] Committee on Foreign Workers, "Knesset Protocol number 63," October 31, 2011, http://bit.ly/10CvTHD (accessed July 15, 2104), p. 7.

[197] Israeli Interior Ministry legal memorandum, "Assessing Requests for Asylum by Eritrean Asylum Seekers," April 25, 2013.

[198] State submissions to High Court of Justice, May 13, 2013 (HCJ 7146/12) and March 11, 2014 (HCJ 8425/13). Human Rights Watch email correspondence with Israeli refugee lawyer, Yonatan Berman, May 11, 2014. Although Israel's Basic Law is not a

The Israeli authorities' recognition that Eritreans likely face grave danger on return to Eritrea and the related decision not to deport them to their home country reinforces the conclusion in this report that any Eritrean choosing to return home following threats of, or actual, indefinite detention violates Israel's nonrefoulement obligations.

In contrast, the Israeli authorities have not recognized the risk of human rights abuses in Sudan against Sudanese returning from Israel despite Sudanese law criminalizing visits to Israel by Sudanese. During the High Court proceedings relating to the January 2012 amendments, government lawyers said Sudanese were allowed to stay only because Israel had no diplomatic ties to Sudan and could therefore not deport them directly there.[199] And during the High Court proceedings relating to the December 2013 amendment to the Anti-Infiltration law, state lawyers said the only reason Sudanese were not being returned to Sudan was because of "technical difficulties."[200]

Non-Removal Policy Avoids Granting Refugee Status and Rights

Temporary protection is a useful mechanism for governments whose asylum systems cannot cope with mass influxes and who instead want to provide blanket protection pending an assessment of individual refugee claims.[201]

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constitution, the Supreme Court has ruled that it has quasi-constitutional quality. "PM Netanyahu addresses International Human Rights Day 2011," December 8, 2011, video clip, YouTube, http://bit.ly/WfTZ4x (accessed August 27, 2014).

[199] State submission to High Court of Justice, May 13, 2013 (HCJ 7146/12). Human Rights Watch email correspondence with Israeli refugee lawyer, Yonatan Berman, May 11, 2014.

[200] State submission to High Court of Justice, March 11, 2014 (HCJ 8425/13); Human Rights Watch email correspondence with Israeli refugee lawyer, Yonatan Berman, May 11, 2014. Government lawyers have made similar statements before Administrative Tribunals. For example, in 2012, government lawyers said that the decision not to deport Eritreans and Sudanese is "simply a sovereign decision that has nothing to do with legal obligations." *Asafu v. Ministry of the Interior*, Administrative Appeal 8908/11, July 17, 2012, http://elyon1.court.gov.il/files/11/080/089/m09/11089080.m09.pdf (accessed August 14, 2014), Justice Vogelman, para 9.

[201] There is no global international treaty or other global legally binding document codifying the concept of temporary protection. UNHCR's Executive Committee (Excom) has adopted a number of Conclusions which refer to the circumstances in which states should consider adopting "temporary protection" mechanisms, including Excom Conclusion no. 19, "Temporary Refuge," Excom Conclusion no. 22, "Protection of Asylum-Seekers in situations of Large-Scale Influx," and Excom Conclusion no. 74, "General [Conclusions on International Protection of Refugees]." See, UNCHR, "Conclusions Adopted By The Executive Committee On The International Protection of Refugees: 1975-2004 (Conclusion No. 1 – 101)," January 1, 2005, http://www.unhcr.org/41b041534.html (accessed August 27, 2014), pp. 30-31, 36-40, and 152-158. Recent UNHCR Guidelines on Temporary Protection call on States to ensure that minimum standards should include no arbitrary or prolonged detention, access to shelter, health, education and access to "self-sufficiency or work opportunities". UNHCR, "Guidelines on Temporary Protection or Stay Arrangements," February 2014, http://www.unhcr.org/5304b71c9.html (accessed April 11, 2014).The EU has adopted temporary protection procedures: Council of the European Union, "Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof," *Official Journal of the European Communities*, L 212 (August 7, 2001), http://old.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF (accessed August 27, 2014), pp. 12-23.

The Israeli authorities have never stated that UNHCR's refugee status determination procedures—in place until the end of June 2009—or Israel's new asylum system in place since then could not cope with the numbers and that the only way Israel could effectively protect them was through a temporary protection policy.[202]

In fact, since March 2009 the authorities have consistently told refugee lawyers and advocates the Interior Ministry can determine whose asylum claims are registered and processed and eventually everyone applying for asylum, including Eritreans and Sudanese, will have their asylum case reviewed.[203]

However, as noted below, the vast majority of Eritreans and Sudanese trying to claim asylum were refused access to asylum procedures until early 2013. The effect of Israel's adoption of a non-removal policy is that it avoids granting refugee status—and the associated rights including freedom of movement, access to work, healthcare, and social security—to people who may well merit such status.

The explanatory notes to Israel's December 10, 2013 law amending the Anti-Infiltration Law, which set out the government's rationale behind the new law authorizing indefinite detention of any "infiltrator," reinforce this conclusion:

> [T]he entry to Israel of an undocumented infiltrator is illegal from its inception, and accordingly it is appropriate to establish **a stricter law** in the case of an infiltrator than in that of a foreign subject who entered Israel lawfully and, after his visa and permit for residency in Israel expired, became unlawfully present.[204] (Emphasis added).

According to an Israeli refugee lawyer, a number of Israeli courts have expressed their frustration that Israel's "non-removal policy" is in fact long-term residency but without the basic rights that attach to such residency.[205] For example, in a 2012 ruling, one of the High Court justices said that the "temporary non-return policy" created an "uncertain normative

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[202] Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben-Dor, May 20, 2014.

[203] Ibid.

[204] "Explanatory Notes" to "Law for the Prevention of Infiltration (Amendment No. 4).

[205] Human Rights Watch interview with Anat Ben-Dor, January 7, 2014, and email correspondence, May 8, 2014.

fog" and that the Interior Ministry should urgently introduce new rules and regulations clarifying the rights of people covered by the policy.[206]

Conditional Release Permits

Since August 2008, most individuals covered by the temporary non-removal policy are given what Israeli lawyers and NGOs colloquially call a "conditional release" permit.[207] Permit holders who lodge an asylum claim retain the permit while the claim is processed and if the asylum claim is rejected.[208] At no point are they given separate asylum seeker permits as these do not exist under Israeli law.[209]

Israeli law does not attach any rights, including the right to work or social benefits, to conditional release permits, although the authorities have informally tolerated employers hiring permit holders.[210] The law states that permits should be renewed every month.[211] If a permit holder does not renew in time, they may be arrested and detained for unlawful presence and will likely struggle to find work as employers are not entitled to employ them once their permit has expired.[212]

In practice, immigration officials determine the length of renewal on an ad hoc basis.[213] Until December 2013, conditional release permit holders had to renew their permits

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[206] *Asafu v The Ministry of the Interior*, Administrative Appeal 8908/11, July 17, 2012; Human Rights Watch email correspondence with Anat Ben-Dor, May 17, 2014.

[207] Human Rights Watch email correspondence with Hotline, July 30, 2014.Under article 2(a)(5) of Israel's 1952 Entry into Israel law, the minister of the interior may grant "a temporary permit for visitation for a person present in Israel without a residence permit and who has been given a removal order – until such a time as he leaves Israel or is removed from it," also known as "temporary residence permits." Entry Into Israel Law, No. 5712 of 1952, http://bit.ly/1pefivl (accessed June 18, 2014), art. 2(a)(5). People detained after irregularly entering Israel—such as Eritreans and Sudanese who enter from Egypt's Sinai Peninsula without passing through official border crossings—may be released from detention under certain conditions and are given such permits. Ibid., arts. 13e(a), (c) and (d). Before July 2009, Eritreans and Sudanese were given a range of different types of documents by UNHCR under ad hoc agreements with the Interior Ministry. Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben-Dor, May 18, 2014.

[208] Israeli law is silent on this point but in practice people retain their permits. Human Rights Watch email correspondence with Israeli refugee lawyer, Yonatan Berman, May 11, 2014. In late 2012, the Interior Ministry said it would start accepting asylum applications from Eritreans and Sudanese who had previously been refused access to asylum procedures on the grounds that conditional release permit holders had no need to apply for asylum. See below, section 5.

[209] Human Rights Watch email correspondence with Israeli refugee lawyer, Yonatan Berman, May 11, 2014.

[210] Entry Into Israel Law, No. 5712 of 1952, art. 2(a)(5); Human Rights Watch email correspondence with Israeli refugee lawyer, Yonatan Berman, May 11, 2014. On work rights, see below, section 6.

[211] PIBA, "Procedures for extending permits of infiltrators," November 16, 2008, http://www.piba.gov.il/Regulations/76.pdf (accessed August 13, 2014).

[212] See below, section 6.

[213] Human Rights Watch interview with Hotline, Tel Aviv, January 8, 2014.

every one to four months, depending on the decision taken by individual immigration officials.[214] Despite bureaucratic obstacles and, at times, long queues, they could generally renew their permits five days a week during normal business hours at 24 Interior Ministry offices.[215]

This significantly changed in late December 2013 when the authorities discontinued permit renewal services at all but four of these offices and reduced the opening times to two days a week for two-and-half hours a day.[216] Three more were opened in January and February 2014, also at the reduced schedule.[217]

Under the new procedures, permit holders must queue to obtain a small paper ticket with a hand-written appointment date. They must then return on the specified date and queue again.[218] Permit holders told Human Rights Watch in January 2014 their permits were being renewed for only two months.[219] Hotline said that as of July 2014, this was still the standard length of time permits are renewed.[220]

Throughout the first four months of 2014, and to a lesser extent between May and July 2014, the reduced number of offices combined with the volume of renewal requests caused chaos at the remaining seven offices. Hundreds, and at times over a thousand, permit holders were repeatedly forced to queue for entire days outside the same office, with hundreds turned away without receiving a ticket for an interview appointment or without reaching the front of the queue on the day of the appointment.[221]

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[214] UNHCR, Submission by UNHCR For the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review, Israel, 17th UPR Session, September 2013; Human Rights Watch email correspondence with Hotline, July 30, 2014. To renew their permits, permit holders must present their previous permit to immigration officers. Human Rights Watch interview with Hotline, January 8, 2014.

[215] Human Rights Watch email correspondence with former staffer from Amnesty International – Israel, July 3, 2014.

[216] Hotline for Refugees and Migrants, "Streamlining the Process," March 6, 2014, http://hotline.org.il/?p=1360 (accessed April 11, 2014). English summary on file with Human Rights Watch. On December 26, 2013, the PIBA said 20 offices would no longer renew conditional release permits and that only the Tel Aviv, Be'er Sheva, Haifa, and Petah Tikva offices would continue this service. Ibid.

[217] On January 15, 2014, the PIBA said two additional offices—in Eilat and Rishon Letzion—had resumed services, but only according to the same reduced schedule. On February 20, 2014, the PIBA said the office in Nazareth had also resumed services, at the reduced schedule. Ibid.

[218] Human Rights Watch interviews with various Eritrean and Sudanese permit holders, Tel Aviv, January 7-14, 2014.

[219] Human Rights Watch interviews with various Eritrean and Sudanese permit holders, Tel Aviv, January 6-15, 2014.

[220] Human Rights Watch email correspondence with Hotline, July 30, 2014.

[221] Hotline, "Streamlining the Process." Human Rights Watch email correspondence with Hotline, July 30, 2014.

On January 2014, Human Rights Watch witnessed a queue at the Interior Ministry offices in Tel Aviv's Bnei Brak district with hundreds of people trying to renew their conditional release permit who were forced into an increasingly narrow space as they inched toward the front of the queue. Human Rights Watch spoke with seven of the people toward the back of the queue who said they had been there for five hours before the office opened and had hardly moved forward in the queue.[222]

Human Rights Watch spoke with ten Eritrean and Sudanese who described the chaotic procedures they had faced in December 2013 and January 2014 when trying to renew their permits.[223]

Like five other interviewees, an Eritrean man said he queued on four separate days just to receive an appointment ticket to renew his permit:

> At the end of December [2013], I went four times to the offices at Azrieli [in Tel Aviv] to renew my permit. There were hundreds of people. The first three times I waited for five hours but I could not get to the front of the queue. The fourth time they gave me an appointment slip to come back in late January. My permit expired on January 12. Now they can arrest me any time.[224]

A Sudanese man described what he saw at the Interior Ministry offices in Tel Aviv's Bnei Brak district in early January:

> On January 5, [2014], I took the day off work to go to the Interior Ministry offices to renew my permit even though my boss was not happy. There were only about 100 people ahead of me but it took five and a half hours to reach the front of the queue. An official gave me a ticket that said "7 January." There was no reason to wait for so long. They could have just given me the ticket.

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[222] Human Rights Watch interviews with individuals queuing to renew their conditional release permits, MOI offices, Bnei Brak district, Tel Aviv, January 6 - 8, 2014. In March 2014, representatives from refugee organizations told the Knesset's Committee for Migrant Workers that permits were being renewed for anything between one and three months only. Committee on Foreign Workers, "Knesset Protocol number 35," March 19, 2014, http://bit.ly/1yQdWx5 (accessed July 16, 2014).

[223] Human Rights Watch interviews with Eritreans and Sudanese, Tel Aviv, January 5, 8 and 11, 2014.

[224] Human Rights Watch interview with Eritrean man, Tel Aviv, January 15, 2014.

> I went back on January 7 and had to take time off work again. I showed my ticket and they told me to wait in a big hall. After four hours an official came up to me and said, 'Do you want to go home to Sudan or do you want to go to prison?' I said I was afraid to go to Sudan so he gave me piece of paper that said I had to go to the Holot Detention Center one month later or be punished and sent to prison.[225]

Six of the interviewees said officials told them they could either return to Eritrea or Sudan, or report to the Holot Detention Center. Three said they were told "go back to your country or go to Holot."[226]

In four cases, interviewees said that while queuing, officials simply told them and others in the queue to leave Israel. A Sudanese man said an Arabic-speaking official walked up and down the queue shouting, "It's now time to go back to Eritrea and Sudan. You are not refugees. You now have enough [money] and we will pay you to leave."[227]

A report by Hotline in March 2014 described the chaotic queues at various Interior Ministry offices between January and March 2014:

> Asylum seekers travel across the country before dawn, oftentimes sleep on the steps leading to the office overnight, stand crowded between the gates with hundreds of other asylum seekers, women and children. … Only after several days of waiting can some 100-200 asylum seekers obtain permits, for one to three months.[228]

The report said that Hotline staff repeatedly saw "several hundred" people queuing for hours between January and March with "more than 1,000 … counted during three days of reception hours in Tel Aviv and Beer Sheva."[229] On March 9, a Hotline staffer said she estimated there were about 1,000 people waiting at the Interior Ministry office in Tel Aviv's business district.[230]

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[225] Human Rights Watch interview with Sudanese man, Tel Aviv, January 11, 2014.

[226] Human Rights Watch interviews with Eritreans and Sudanese, Tel Aviv, January 8, 11, and 12, 2014.

[227] Human Rights Watch interview with Sudanese man, Tel Aviv, January 12, 2014.

[228] Hotline, "Streamlining the Process."

[229] Hotline, "Streamling the Process."

[230] Human Rights Watch email correspondence with Hotline staffer, July 30, 2014, confirming Facebook entry dated March 9, 2014.

On March 5, 2014, Hotline staff contacted their clients to warn them about long queues involving up to 1,500 people outside the Interior Ministry offices in Tel Aviv's Bnei Brak district.[231] The warning said that 1,200 people had tried to renew their permits the day before but had been unable to access the offices.[232]

Human Rights Watch spoke with an Eritrean man who explained the effect having to renew his permit every few months was having on his ability to work. He said that prospective employers always turned him down when they found out that he had only a month or two before his permit expired because, they said, they could not be sure it would be renewed. He said this made finding a job almost impossible.[233]

According to Hotline, in March, the Interior Ministry opened additional offices to process conditional release permits which temporarily helped to improve the renewal procedure. However, since then there have been repeated problems with permit holders at times queuing for entire days and failing to reach the front of the queue, forcing them to return multiple times before managing to renew their permit.[234] In early September, *Haaretz* published the account of an Eritrean permit holder who described extended waiting times and humiliating treatment at the hands of Interior Ministry officials.[235]

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[231] Human Rights Watch email correspondence with Hotline staffer, July 30, 2014, confirming Facebook entry dated March 5, 2014.

[232] Ibid.

[233] Human Rights Watch interview with Eritrean man, Tel Aviv, January 12, 2014.

[234] Human Rights Watch email correspondence with Hotline, July 30, 2014.

235 "Bureaucracy – where Tel Aviv and Eritrea meet," *Haaretz*, September 1, 2014 http://www.haaretz.com/opinion/.premium-1.613496 (accessed September 3, 2014).

V. Lack of Access to Fair and Efficient Asylum Procedures

The second part of Israel's strategy to avoid granting Eritreans and Sudanese a secure legal status in Israel has been to deny them access to fair and efficient asylum procedures. Under the international law principle of nonrefoulment, Israel is not allowed to forcibly return asylum seekers unless it fairly examines their protection claims and finds them to be without merit. Absent proper screening of asylum claims, Israel's use of detention to coerce Eritreans and Sudanese asylum seekers to return to their home countries where they would face the risk of persecution amounts to refoulement

Despite claims to the contrary, the Israeli authorities only started to allow Eritreans and Sudanese to lodge asylum claims in significant numbers in early 2013. Although they began to review the claims of some detainees in mid-2013, refugee lawyers say that as of August 2014 they had no evidence that authorities had reviewed any claims of urban Eritrean or Sudanese asylum seekers. Officials' statements claiming there are no refugees in Israel mean some Eritreans and Sudanese are dissuaded from even trying to lodge claims while others give up due to opaque bureaucratic procedures for lodging claims.

The Israeli authorities have not publicized in any way how asylum seekers can lodge asylum claims, a failure that inevitably keeps the number of claims down. Shortcomings in Israel's asylum procedures mean claims are unlikely to be fairly reviewed, as reflected in Israel's extremely low refugee recognition rate.[236]

In April 2013, Israeli Interior Ministry lawyers produced an analysis for asylum adjudicators concluding that asylum adjudicators "will reject" the refugee claims of Eritrean asylum seekers who say they fear severe punishment on return to Eritrea for having deserted from, or evaded, lifelong military service.[237] Drawing on restrictive refugee jurisprudence in two countries, the analysis concludes that this fear alone is not enough to make them refugees under international refugee law.

[236] See below.

[237] See below.

Overview of Israel's Asylum Procedures and UNHCR's Role

Although Israel has acceded to the 1951 Refugee Convention, it does not have its own asylum law. In 2001, Israel adopted procedures to deal with asylum applications under which UNHCR conducted the refugee-status-determination interview and the Interior Ministry took the final decision on whether to grant or deny refugee status.[238] Since July 2009, the Interior Ministry has dealt with all stages of the asylum process itself.[239] In January 2011, Israel adopted new asylum procedures."[240]

From mid-2009 until early 2013, the Interior Ministry allowed UNHCR to monitor the work of some asylum adjudicators on an ad hoc basis.[241] In March 2013, UNHCR submitted an amicus brief to the Israeli High Court in which it requested the court to allow UNHCR to join a challenge against the legality of the January 2012 legislation amending the 1954 Anti-Infiltration Law.[242] As a result, the authorities ended their permission for UNHCR to monitor some of the asylum adjudication conducted by Israel's National Status Granting Body.[243]

In September 2013, UNHCR concluded that "the absence of a systematic procedure and the inadequate capacity of the Ministry make it difficult … to promptly and fairly process asylum claims."[244] A 2012 report by an Israeli refugee lawyer and academic reviewing Israel's asylum procedures concluded that the system had failed on a number of levels including breach of the right to appeal against the basis of asylum rejections, unfair, degrading, and threatening treatment of applicants, and biased and unprofessional research relating to conditions in asylum seekers' countries of origin.[245]

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[238] Ministry of Justice, "Regulations Regarding the Treatment of Asylum Seekers in Israel," in Physicians for Human Rights and Tel Aviv University, "A Safe Haven? Problems in the Treatment Offered by the State of Israel o Refugees and Asylum Seekers," September 2003, http://bit.ly/1Bbf53p (accessed August 13, 2014), pp. 68 - 71.

[239] UNHCR, Submission by UNHCR For the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review, Israel, 17th UPR Session, September 2013.

[240] PIBA, "Procedure for Handling Political Asylum Seekers in Israel," January 2, 2011, http://bit.ly/1nSC8qB (English) and http://bit.ly/1rvsHkk (Hebrew) (accessed April 11, 2014).

[241] Human Rights Watch email correspondence with UNHCR, June 22, 2014.

[242] UNHCR, "UNHCR intervention before the Supreme Court of Israel, High Court of Justice, in the case HCJ 7146/12," March 7, 2013, http://www.refworld.org/type,AMICUS,,,513dbe952,0.html (accessed April 11, 2104).

[243] Human Rights Watch email correspondence with UNHCR, Tel Aviv, July 30, 2014.

[244] UNHCR, Submission by UNHCR For the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review, Israel, 17th UPR Session, September 2013.

[245] Hotline, "Until our Hearts are Completely Hardened."

Eritreans and Sudanese Denied Access to Asylum Procedures Until Late 2012

Israeli officials have regularly asserted that anyone wishing to claim asylum in Israel, including people with conditional release permits, could freely access the asylum system and have their case fairly reviewed.[246] Yet the reality has been quite different, as evidenced by three Interior Ministry letters from 2009, 2010, and 2011 to Israeli lawyers stating it was not accepting asylum applications from Eritreans or Sudanese as they were benefitting from Israel's non-deportation policy.[247]

Until at least early 2012, Eritreans and Sudanese asking to register asylum claims were interviewed only to establish their nationality. Once their nationality was confirmed, they were denied access to the next stage of Israel's asylum procedures, which reviews the details of the asylum claim, and were simply given a conditional release permit.[248]

UNHCR said the authorities allowed some detained Eritreans and Sudanese to lodge asylum claims in October 2012.[249] The first time the Interior Ministry informed UNHCR that anyone holding a conditional release permit could lodge an asylum claim was in November 2012.[250] The ministry gave no reason for the change in policy.[251] In March 2013, UNHCR said the authorities never publicly announced the policy change and that very few Eritreans and Sudanese in contact with UNHCR were aware they could apply.[252]

Problems in the Cities

Human Rights Watch spoke with eight Eritreans and Sudanese who described to Human Rights Watch how they struggled for weeks or months in 2011 and 2012 to lodge asylum claims in Tel Aviv but failed. They described various obstacles to lodging asylum claims including guards at Ministry of the Interior offices not allowing them into buildings to ask for asylum forms, having to go repeatedly to Interior Ministry offices and wait each time for

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[246] For example, in 2012, Interior Ministry lawyers claimed anyone could lodge an asylum claim, a claim which the Supreme Court dismissed. *Asafu v. Ministry of the Interior*, Administrative Appeal 8908/11, July 17, 2012, Justice Vogelman, para 9.

[247] Hotline, "Until Our Hearts Are Completely Hardened," p. 9; Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben-Dor, August 8, 2014.

[248] Hotline, "Until Our Hearts Are Completely Hardened," p. 9; Human Rights Watch email correspondence with Israeli refugee lawyer, Yonatan Berman, May 11, 2014.

[249] Human Rights Watch email correspondence with UNHCR Tel Aviv, August 1, 2014.

[250] Human Rights Watch interview with UNHCR Tel Aviv, January 9, 2014.

[251] Ibid.

[252] Human Rights Watch email correspondence with UNHCR Tel Aviv, March 8, 2013.

up to ten hours without receiving an application form, and being prohibited from picking up forms to pass on to others wishing to claim asylum.

A Sudanese man described what happened when he tried to claim asylum at the Interior Ministry offices on Salame Street in south Tel Aviv in early November 2012:

> I waited for hours. When an official finally spoke to me I asked for an asylum form and he said 'Why do you need a form? You have a permit.' I told him I wanted to get refugee status and he said, 'We do not have a form for you because the form is only for people who don't have a permit.' I asked again and he said no again. Then I showed him a pamphlet UNHCR had given me about how to apply for asylum. He got angry and shouted 'Where are you from and why did you leave?' He walked away and left me alone. I stayed for a long time. Finally he came back and told me to leave.[253]

Problems in Detention

In June 2012, the Israeli authorities started automatically detaining all newly arriving "infiltrators." According to refugee service providers, between June 2012 and February 2013, officials in the Saharonim Detention Center, located in an isolated region of the Negev desert close to the Egyptian border, tried to dissuade Eritrean and Sudanese detainees from lodging asylum claims in a number of ways. These included telling them their time in detention would be extended if they filed an application, providing insufficient information to detainees on how to submit claims, and either refusing to distribute application forms or handing them out only after lengthy delays.[254]

As a result, hundreds of detained Eritrean and Sudanese asylum seekers in Saharonim were, in effect, denied access to asylum procedures.

Hundreds of detainees told Hotline staff that when they asked how to claim asylum, officials—including prison guards, detention tribunal judges, and Tigrinya interpreters—

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[253] Human Rights Watch interview with Sudanese man, Tel Aviv, January 12, 2014.

[254] Human Rights Watch telephone interviews with UNHCR-Tel Aviv and Hotline, March 2013; "Israel: Detained Asylum Seekers Pressured to Leave;" UNHCR, Submission by UNHCR For the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review, Israel, 17th UPR Session, September 2013.

told them they would be detained for at least three years if they lodged asylum claims. Others said officials simply denied they had a right to claim asylum.[255]

In a notable case, a detained Sudanese man told Hotline on February 12, 2013:

> In the first interview I told [the officials] I wanted to ask for asylum. The interrogator banged his fist on the table and said that in Israel there is no asylum and that we come just to work and should go back [to Sudan].[256]

Another Sudanese man told Hotline on February 12, 2013:

> After Hotline helped me to ask for asylum, the Ministry of Interior staff asked me three times whether I was ready to return to Sudan. I said no. They put pressure on me, saying that if something happened to my wife and children in Sudan it would be my fault. They said if I stayed, I would spend many years in prison. Some said three years, others said five, and then they said eight or ten years.[257]

In early March 2013, after significant pressure from Israeli NGOs and lawyers, the authorities finally handed out larger numbers of asylum application forms to detainees in the Saharonim and Ktzi'ot Detention Centers.[258]

Continued Problems Accessing Asylum Procedures in late 2012 and 2013

Human Rights Watch spoke with seven Eritreans and Sudanese in Tel Aviv about problems they faced in late 2012 and in 2013 in trying to lodge claims, even after the policy change in November 2012. Four said the authorities tried to dissuade them from lodging their claim and three said they denied them access to the procedures.[259]

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[255] Human Rights Watch interviews with UNHCR and Hotline, March 2013; "Israel: Detained Asylum Seekers Pressured to Leave," Human Rights Watch news release, March 13, 2013.

[256] Human Rights Watch telephone interview with Hotline, March 2013; "Israel: Detained Asylum Seekers Pressured to Leave," Human Rights Watch news release, March 13, 2013.

[257] Ibid.

[258] Human Rights Watch interview with Hotline, Tel Aviv, January 8, 2014.

[259] Human Rights Watch interviews with Eritrean and Sudanese, Tel Aviv, January 6 - 15, 2014.

Typical of four other stories in which people had to spend days trying to obtain and lodge an asylum claim form, a 26-year-old man from Darfur said:

> I went to the office in Salame in January 2013. I waited a whole day before anyone talked to me. I asked to lodge a claim. They said I had a permit so didn't have to apply. I told them I was worried they might cancel my permit so wanted to try and get refugee status. They told me to come back the next day. I did that and waited seven hours. Then they gave me the form. I completed it and went back after a few days. They told me, 'Today is not the day to submit forms,' but they refused to say when to come back. I went back many times. Each time they told me to go away. Finally they took the form and said they would let me know. I have not heard from them since.[260]

A Hotline lawyer visited the Refugee Status Determination Unit in Tel Aviv in December 2013 and witnessed how an official told a Sudanese man that he was not allowed to lodge a refugee claim because he had a conditional release permit but on seeing the lawyer changed his line and said to the Sudanese man "of course you can apply."[261]

An Eritrean man who learned to speak Hebrew during his time in Israel said that in December 2012 he went to the Ministry of Interior office in Tel Aviv to claim asylum:

> I asked the security guard to let me in so I could make an asylum claim…. I explained I was from Eritrea and wanted to ask for protection in Israel but he refused to let me in. I asked again and finally he went inside to speak with staff. Then he came out and said, 'You are not allowed to do that. You already have a permit,' and told me to leave. After that I gave up.[262]

In October 2013, the head of Israel's Refugee Status Determination Unit said that because "the Sudanese and Eritrean population enjoy some type of non-deportation protection at the moment, we are currently prevented from treating these populations."[263] According to

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[260] Human Rights Watch interview, Tel Aviv, January 16, 2014.

[261] Human Rights Watch interview with Hotline, January 8, 2014.

[262] Human Rights Watch interview, Tel Aviv, January 12, 2014.

[263] Committee on Foreign Workers, "Knesset Protocol number 12," October 15, 2013, http://bit.ly/1sBQDqx (accessed August 13, 2014), p. 3.

refugee lawyers, the first decisions made on Eritrean and Sudanese asylum applications lodged in detention were in fact taken in mid-2013.[264] However, as of mid-August 2014 there was no evidence that the authorities had reviewed a single claim lodged by Eritrean or Sudanese urban asylum seekers.[265]

Inadequate Processing of Asylum Claims

Israel's processing of asylum cases generally, and its handling of Eritrean and Sudanese asylum claims specifically, falls below international standards. In September 2013, UNHCR concluded that Israel's inadequate procedures meant it was "difficult … to promptly and fairly process asylum claims."[266] Israel has also adopted an extremely restrictive approach toward international refugee law when adjudicating Eritrean asylum claims.

Dismissing Cases out of Hand

Israel's asylum procedures allow the Refugee Status Determination Unit to dismiss an asylum application out of hand if "the claims and facts on which an application is based, even if all of them were to be proven, do not constitute any of the elements set out in the refugee convention."[267] UNHCR's Executive Committee (ExCom) has concluded that procedures used to implement such a rule need to meet certain minimum requirements in order to avoid "the grave consequences of an erroneous determination" [i.e. refoulement], including a "complete personal interview by a fully qualified official," the right to have only an "authority normally competent to determine refugee status" dismiss the application, and the ability "to have a negative decision reviewed."[268]

In September 2010, UNHCR wrote to the Israeli authorities setting out in exhaustive detail why the new procedures did not comply with ExCom's conclusions. UNHCR said the procedures failed to guarantee asylum seekers access to full interviews, were not run by

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[264] Human Rights Watch email correspondence with Hotline, August 15, 2014.

[265] Human Rights Watch email correspondence with Hotline, August 18, 2014.

[266] UNHCR, Submission by UNHCR For the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review, Israel, 17th UPR Session, September 2013.

[267] PIBA, "Procedure for Handling Political Asylum Seekers in Israel," January 2, 2011, sections 3 and 4. The English letter head of the Unit also refers to itself as the "RSD Unit." Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben Dor, May 29, 2014.

[268] UNCHR, "The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum," No. 30 (XXIV), October 20, 1983, http://www.refworld.org/docid/3ae68c6118.html (accessed March 4, 2014).

appropriately qualified staff, did not allow the applicant to set out the details of his or her claim, and failed to guarantee the right to appeal if the claim is rejected.[269]

In March 2012, UNHCR said Israel's "out-of-hand" rejection procedures continued to fall short of required standards because the asylum officers asking the questions were not properly trained and were not asking the right questions to identify valid asylum claims.[270] In September 2013, UNHCR concluded these problems had not been resolved, stating that the procedures "lack the necessary procedural safeguards, including adequate access to an opportunity to appeal a decision" and that "such deficiencies are likely to impact the quality and fairness of decisions rendered for such claims."[271]

In 2011, almost 4,000 applications out of about 4,300 were dismissed out of hand and in 2012 almost 1,000 out of about 1,170 were handled this way. There are no 2013 statistics available.[272]

Inadequate Rejection Letters

A review by Israeli asylum lawyers of asylum rejection letters for a range of nationalities in 2011 and early 2012 concluded that the letters failed to adequately explain the reasons the asylum claim was rejected. The review concluded that the letters use standard formulaic language to reject claims. It said many letters simply state that the criteria of the 1951 Refugee Convention have not been met, giving no further details of why exactly the individual applicant's case failed to meet those criteria.[273] In other cases, they give a very general summary of the claim without mentioning key facts of the case that go to the heart of the claim, and fail to address key issues such as whether the adjudicator found the applicant to be credible and whether the applicant's case is in line with available information about the conditions in the applicant's home country.[274]

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[269] Hotline, "Until Our Hearts Are Completely Hardened," p. 34; Human Rights Watch email correspondence with Israeli refugee lawyer, Yonatan Berman, May 11, 2014.

[270] Human Rights Watch interview with UNHCR, Tel Aviv, March 28, 2012.

[271] UNHCR, Submission by UNHCR For the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review, Israel, 17th UPR Session, September 2013.

[272] Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben-Dor, August 8, 2014.

[273] Hotline, "Until Our Hearts Are Completely Hardened," pp. 42 - 43.

[274] Ibid.

Human Rights Watch spoke with a man in Tel Aviv who worked as an Arabic interpreter at the Saharonim Detention Center in 2012 and 2013. He said that as the deadline approached by which the authorities were bound to decide on asylum requests or release the detained asylum seekers, officials asked him to read out pro forma rejection letters to large numbers of the detainees and that the language in each letter was identical.[275]

Based on an Interior Ministry legal opinion relating to Eritrean asylum cases and Eritreans' fear of persecution resulting from desertion or draft evasion (see below), in 2014 the authorities rejected hundreds of Eritrean asylum claims using formulaic language that does not distinguish between the varying facts of each individual claim.[276]

According to a leading asylum lawyer in Israel, in 2013 and 2014 rejection letters remained very short with only a brief summary of the facts and the decision. [277] If an asylum seeker wants to obtain more details on why his claim was rejected, he must apply to the Interior Ministry's Refugee Status Determination (RSD) Unit who will issue him with a Hebrew copy of any further details explaining the rejection. Asylum seekers without representation are not aware of this right or, if they are, are not aware of how to apply to the RSD Unit.[278]

Overly Restrictive Interpretation of Refugee Law on Eritrean Asylum Cases

Since 2013, Israeli asylum adjudicators have instructions to reject Eritrean refugee claims by people claiming they fear the authorities in Eritrea will harm them simply because they deserted from, or evaded, lifelong military service.[279] As of early March 2014, the authorities have reviewed 446 Eritrean asylum claims and have rejected all but two.[280]

In 2012, 84 percent of Eritrean asylum seekers globally were recognized as refugees and 6 percent were given other forms of protection.[281] In 2013, 67 percent were granted refugee status and 17 percent other forms of protection.[282] There is no information on the basis on

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[275] Human Rights Watch interview with Sudanese community leader, Tel Aviv, January 11, 2014.

[276] Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben-Dor, Tel Aviv, August 8, 2014 and UNHCR, Tel Aviv, July 30, 2014. Examples of letters on file with Human Rights Watch.

[277] Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben-Dor, August 8 and 13, 2014.

[278] Ibid.

[279] See below.

[280] See below.

[281] UNHCR, UNHCR Global Trends 2012: Displacement The New 21st Century Challenge, 2013.

[282] UNHCR, UNHCR Asylum Trends 2013: Levels and Trends in Industrialized Countries, 2014, Annex tables.

which Eritreans worldwide sought or were granted asylum, but many undoubtedly based successful claims on a fear of persecution resulting from evading service in, or deserting from, Eritrea's military. Eritrean conscripts are forced into years or decades of military service, which constitutes illegal forced labor, and while serving are at risk of being subjected to cruel military punishment and torture. Deserters and draft evaders are detained for lengthy periods in terrible conditions without trial and some are tortured.[283]

An April 2013 legal opinion by Israeli Interior Ministry lawyers stated that "the main claim resting with Eritrean asylum seekers is the claim regarding their evasion from military service or their defection from military service."[284] The opinion also stated that "a great part" of the 36,000 Eritreans who have come to Israel "claimed that they cannot return to their country of origin out of fear of being forcefully recruited [in]to the military or punished for leaving Eritrea illegally."[285]

The opinion reviews the way in which courts in six legal jurisdictions have addressed Eritrean asylum claims based on desertion or draft evasion. It recognizes that the courts unanimously agree with UNHCR that punishment for draft evasion and desertion in Eritrea is "severe, disproportionate, excessive and arbitrary."[286]

However, the paper said the courts disagree on whether the reason for that punishment is politically motivated, that is to say whether it is based on the authorities' view that draft evaders and deserters are politically opposed to the authorities, or whether it is based on some other unidentified motive. Refugee law states a person is a refugee only if the harm they fear is inflicted by the persecutor for one or more of five reasons, including the refugee's "political opinion."[287] If it is inflicted for other reasons, it still amounts to harm—which can form the basis for claiming other types of protection—but not harm motivated by reasons that justify the granting of refugee status.

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[283] Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea,* April 2009.

[284] Israeli Ministry of the Interior legal memorandum, "Assessing Requests for Asylum by Eritrean Asylum Seekers," April 25, 2013, p. 7, on file with Human Rights Watch. The opinion, obtained independently from three reliable sources in Israel, also refers to the fact that UNHCR has said that "the majority" of the 1,847 asylum claims Eritreans lodged in Switzerland between January and October 2008 were based on objection to military service. Ibid.

[285] Ibid., p. 20.

[286] UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea," April 20, 2011, (accessed April 9, 2014), pp. 11-12.

[287] Under Article 1(A)2(2) of the 1951 Refugee Convention, an asylum seeker must show that he or she fears persecution based on one of five grounds: race, religion, nationality, membership of a particular social group or political opinion.

The Interior Ministry's memo follows the most restrictive position adopted by some courts in two jurisdictions, Germany and the United States, which hold that the severe nature of the punishment for draft evasion or desertion is not necessarily or always motivated by political reasons.[288] This approach differs from other countries, such as the United Kingdom and Canada, where courts have concluded that any person of draft age (18-55) leaving Eritrea without an exit permit will be automatically viewed as a deserter or draft evader and that the severe punishment they would face on return results from the authorities viewing all such people as political opponents.[289]

The Israeli Interior Ministry memo notes that UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea concluded that in 2009 draft evasion and desertion "**is** viewed by the authorities as an expression of objection to the government" but then incorrectly stated that in 2011 UNHCR's updated Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea concluded that "an objection to serve in the Eritrean military **may be** perceived as an expression of political objection to the government" (emphasis added).[290]

UNHCR also wrote to Human Rights Watch stating that any changes in the 2011 Eligibility Guidelines "relate more to changes introduced in 2010 to standardize the contents of UNHCR Eligibility Guidelines generally than to any perceived changes to the level of risk of persecution faced by Eritrean asylum-seekers. As you [Human Rights Watch] rightly point out, the human rights and other empirical evidence cited in the 2011 Guidelines do not substantiate any significant improvement in the situation on the ground."[291]

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[288] For the United States, see *Fessehaye v. Holder*, 494 F. App'x 445 (5th Cir. 2012); *Haile v. Holder*, 496 F. App'x 459 (5th Cir. 2012); *Asres v. Holder*, 364 F. App'x 127 (5th Cir. 2010); *Mohammed v. U.S. Attorney General*, 547 F.3d 1340 (11th Cir. 2008); *Nuru v. Gonzal*es, 404 F.3d 1207 (9th Cir. 2005); *Woldermariam v. Ashcroft*, 112 F. App'x 189 (3d Cir. 2004). For Germany, see *Bundesverwaltungsgericht* [BVerwGE], Case No. 9 C 22/88, Decision, Dec. 12, 1988; and *Bundesverwaltungsgericht* [BVerwGE], Case No. 9 B 30/89, Decision, Mar. 7, 1989. For the UK, see U.K. Immigration Appeal Tribunal, Appeal No: Eritrea CG, 2005, UKIAT 00106. For the European Court of Human Rights, see *Said v. the Netherlands*, Application no. 2345/02.

[289] United Kingdom Home Office, "Operational Guidance Note: Eritrea," vol. 14.0, February 2014, http://bit.ly/1uS1IEw (accessed 24 June 2014); Canadian Immigration Appeal Board Decision V86-4030W, March 21, 1986.

[290] Israeli Ministry of the Interior legal memorandum, "Assessing Requests for Asylum by Eritrean Asylum Seekers," April 25, 2013, pp. 20-21. In its 2009 Eligibility Guidelines, UNHCR stated, "Military service has become politicized in Eritrea and actual or perceived evasion or desertion from military service is regarded by the Eritrean authorities as an expression of political opposition." UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea," April 2009, http://www.refworld.org/docid/49de06122.html (accessed March 31, 2014) p. 16. In its 2011 Guidelines, UNHCR said "*Unlawful/unauthorized departure from Eritrea may be* perceived by the authorities *as having attempted to avoid military service*" (emphasis added). UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea," April 20, 2011, (accessed April 9, 2014), p. 15.

[291] Letter from the Deputy Director of UNHCR's Division of International Protection to Human Rights Watch, August 30, 2011.

UNHCR's 2011 Eligibility Guidelines maintain that Eritreans who desert or evade military service "may be regarded as disloyal and treasonous" and that "the punishment for desertion or evasion is so severe and disproportionate … to amount to persecution."[292] The Guidelines are suggesting that by evading conscription or deserting the military, the Eritrean government imputes to them a political opinion of disloyalty to the regime, and on that basis is likely to persecute them with severe and disproportionate punishments.

In late 2013, UNHCR issued new global guidelines relating to refugee claims based on military service. They stress that courts should not focus on the intent of the persecutor as the decisive factor in determining a claim because it is often difficult to establish.[293] Adjudicators should instead focus on how the asylum seeker is "likely to experience the harm."[294] This "predicament approach" in refugee law is guided more by assessing the victims' experience of "being persecuted" on account of one or more of the five protected grounds in the Refugee Convention rather than by examining the persecutor's intentions.

Although the Interior Ministry's legal opinion claims that "each case will be examined individually by giving the applicant all the options to raise all of his claim," the opinion in effect requires that each individual Eritrean asylum seeker in Israel prove that the authorities would punish him or her for draft evasion or desertion specifically because they believe he or she left the military or fled the country as an expression of political opinion.

Israel should consider Eritrean refugee claims consistently with UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea which stress that asylum adjudicators should recognize that the Eritrean regime views draft evasion or desertion as an act of disloyalty, which in refugee law terms means the regime imputes to them a political opinion which makes it likely they will be persecuted.

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[292] UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea," April 20, 2011, (accessed March 31, 2014), pp. 15 and 11.

[293] UNHCR, "Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees," HCR/GIP/13/10, December 3, 2013, http://www.refworld.org/docid/529ee33b4.html (accessed March 31, 2014).

[294] Ibid.

Failure to Grant Sudanese Refugee Status Automatically

As noted above, Sudanese in Israel have a *sur place* refugee claim because Sudan's Penal Code states that Sudanese who visit an enemy state are liable to a penalty of up to 10 years in prison. Yet to date, Israel has not recognized any Sudanese asylum seekers as refugees, let alone recognized all of them automatically as refugees.

Extremely Low Refugee Recognition Rates

As noted above, the authorities did not start to review the asylum claims of Eritrean and Sudanese detainees until mid-2013 and, as of August 2014, there was no evidence they had reviewed the claims of urban Eritrean and Sudanese asylum seekers. Between July 2009 and August 2013, Israel approved 26 out of 17,194 asylum applications, which include many lodged with UNHCR before Israel took over its refugee status determination tasks in July 2009.[295] This amounts to a recognition rate of 0.15 percent. In September 2013, UNHCR said that "the eligibility criteria" for refugee status "appear overly restrictive."[296]

In late March 2014, Israel's interior minister said that as of an unspecified date, 4,800 Eritreans and Sudanese had lodged asylum claims.[297] In contrast, Israeli media reported in mid-March 2014 that the authorities had said that 1,468 Eritreans and 1,373 Sudanese had filed claims, a total of 2,841.[298] In June 2014, the authorities said that 1,386 of the Eritrean and Sudanese detainees in Holot had applied for asylum but it is not clear how many of these were included in the March 2014 statistics.[299] In early March 2014, the ministry also said that they had interviewed 980 Eritrean asylum seekers, accepting two as refugees and rejecting 444 with the remainder of the cases still undecided.[300] This constitutes a recognition rate of 0.4 percent. At that time, the Ministry also said it had interviewed 505 Sudanese applicants.[301] UNHCR said that as of mid-August 2014, the authorities had

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[295] Ilan Lior, "In Place of the Law that was Nullified," *Haaretz* , October 15, 2013, http://bit.ly/1qhB7O4 (accessed August 13, 2014). Recognized refugees receive a one year residency license under section A(5) of the 1952 Entry Into Israel law. PIBA, "Procedure for Handling Political Asylum Seekers in Israel," January 2, 2011, section 7(f).

[296] UNHCR, Submission by UNHCR For the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review, Israel, 17th UPR Session, September 2013.

[297] Ilan Lior, "Israel's interior minister Seeks to Extend Grants to Leaving Migrants," *Haaretz*, March 26, 2014 http://www.haaretz.com/mobile/.premium-1.582154 (accessed March 27, 2014).

[298] Ilan Lior, "Two African Countries Taking in Asylum Seekers Leaving Israel," *Haaretz*, March 12, 2014, http://www.haaretz.com/news/national/.premium-1.579270 (accessed March 18, 2014).

[299] Hotline, "From One Prison to Another," p.6.

[300] Hotline, "From One Prison to Another," p.5.

[301] Ibid.

decided on 25 of those cases, rejecting all of them.[302] These recognition rates stand in contrast to global protection rates for Eritrean and Sudanese asylum seekers in 2013 which stood at 83 and 67 percent respectively.[303]

The almost blanket rejection of all Eritrean and Sudanese asylum claims is closely aligned with senior Israeli officials' publically stated viewpoints that Eritreans and Sudanese in Israel are not refugees. In June 2009, the head of the Population and Immigration Border Authority said that "99.9%" of all foreign nationals who had claimed or might claim asylum in Israel were in Israel "for work" and that "they are not asylum seekers, they are not at any risk."[304] During a January 2014 discussion on how to respond to Eritrean and Sudanese demonstrations in Israel, Prime Minister Benjamin Netanyahu said, "They are not refugees … they are migrant workers who are here illegally."[305]

Eritrean and Sudanese community leaders told Human Rights Watch they knew of hundreds of people who had told them they did not see the point of lodging asylum claims because Israeli officials had already decided they were not refugees.[306]

Lack of Effective Appeal Rights Against Decisions to Refuse Asylum

Israeli law limits asylum seekers' ability to challenge a decision to reject their asylum claim to a basic administrative review of such decisions.[307] Governed by Israeli administrative law, reviews are limited to considering whether the decision-maker properly exercised their discretion.[308] Asylum seekers have no right to request a comprehensive review of all the facts and legal conclusions reached by the decision-maker.[309]

The 2011 Asylum Regulations give rejected asylum applicants the right to file a request for a "reconsideration" of the decision to reject their claim if new evidence has come to light

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[302] Human Rights Watch email correspondence with UNHCR, July 30, 2014.

[303] UNHCR, UNHCR Asylum Trends 2013: Levels and Trends in Industrialized Countries, 2014, Annex tables.

[304] Nurit Wurgaft, "Closing the holes and the loopholes," *Haaretz*, June 21, 2009, http://www.haaretz.com/print-edition/features/closing-the-holes-and-the-loopholes-1.278503 (accessed April 11, 2014).

[305] David Lev, "PM: Protests or Not, Illegals Will be Deported," *Israel National News*, January 6, 2014, http://www.israelnationalnews.com/News/News.aspx/175986#.UzqcMvldX9s (accessed March 31, 2014).

[306] Human Rights Watch interviews with community leaders, Tel Aviv, January 7 - 16, 2014.

[307] Human Rights Watch email correspondence with Israeli refugee academic, Anat Ben Dor, July 23, 2014.

[308] Ibid.

[309] Ibid.

or if there has been a change in circumstances since the decision in question was made.[310] Until end May 2014, asylum seekers could also request a judicial review in district courts of decisions by Interior Ministry officials which only applied administrative law.[311]

On June 1, 2014, a new specialized "Appeals Tribunal" began reviewing immigration and citizenship decisions, including under the 1952 Entry into Israel Law and the December 2013 4th Amendment to the 1954 Anti-Infiltration Law.[312] The new tribunal will also only apply administrative law and can therefore not be considered an appeals court.[313]

In early June 2014, the authorities said they had appointed four adjudicators and one "Head of Tribunal" to hear cases, including a backlog of 2,000 cases.[314] Critics say that the lack of capacity, massive backlog, and the lack of legal aid that prevents most asylum seekers from appealing means the court cannot be viewed as an effective legal remedy.[315]

Lack of Complementary Protection

Many industrialized countries' asylum laws recognize that people who do not qualify as refugees may nonetheless risk serious human rights abuses if returned to their home country or other countries that may abuse them. States grant such people "complementary protection" as they are obliged under international human rights law, including customary international law, not to return people to such harm.[316] Israeli law provides no possibility of temporary residence based on human rights considerations.[317]

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[310] 2011 Asylum Regulations, sections 6, 7 and 9.

[311] Human Rights Watch email correspondence with lawyer at Hotline, July 31, 2014.

[312] Amendment No.22 to the 1952 Entry into Israel Law, 577-2011, http://bit.ly/1t3pzhw (accessed July 23, 2014), section 13(k)(c); Protocol no. 297 of the Committee of Internal and Environmental Affairs, May 27, 2014 http://bit.ly/1sQLryB (accessed July 23, 2014); Knesset Statement, "As of June – a new Appeals Court will open in Israel on the subject of entry into Israel and on stay, residence and citizenship in Israel," May 28, 2014 http://bit.ly/1pa6kTo (accessed July 23, 2014).

[313] Human Rights Watch email correspondence with Israeli refugee academic, Anat Ben Dor, July 23, 2014.

[314] Ibid.

[315] Human Rights Watch email correspondence with Israeli refugee academic, Anat Ben Dor, July 23, 2014, and Israeli refugee lawyer, Yonatan Berman, July 17, 2014; Hotline, "From One Prison to Another," p. 28.

[316] UNHCR's Executive Committee's Conclusion 103 encourages "the use of complementary forms of protection for individuals in need of international protection who do not meet the refugee definition under the 1951 Convention or the 1967 Protocol." "Conclusion on the Provision of International Protection including through Complementary Forms of Protection," No. 103 (LVI), October 7, 2005, http://www.unhcr.org/43576e292.html (accessed May 29, 2014).

[317] Israeli law does not refer the nonrefouelment principle as defined in refugee and human rights law. UNHCR, Submission by UNHCR For the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review, Israel, 17th UPR Session, September 2013, http://bit.ly/1w17wgz (accessed August 18, 2014), p. 4.

VI. Other Pressure to Leave Israel

The Israeli authorities have used the precarious legal status given to Eritreans and Sudanese to justify restricting their access to work and adequate access to basic primary and secondary healthcare. The lack of a clear legal status has rendered Eritreans and Sudanese vulnerable in other social sectors as well. However, Eritreans and Sudanese who spoke with Human Rights Watch, as well as with Israeli service providers, consistently said that access to work and healthcare were their most urgent concerns and that the lack of access to basic primary and secondary healthcare has left many in a precarious economic and social condition which in some cases has contributed to the decision to leave Israel.

Unclear Work Rights for Eritreans and Sudanese

Conditional release permits do not have work rights attached and the authorities have made clear they do not want to help give "infiltrators" access to employment opportunities.[318] However, since 2006, some Israeli employers have hired conditional release permit holders with valid permits, even though the permit is not an official employment authorization document.[319]

In November 2010, the authorities added the words "this document is not a work permit" to the permits and announced that permit holders would be barred from working. [320]

In late November 2010, NGOs petitioned the High Court to order the authorities not to penalize employers hiring permit holders and to officially authorize all permit holders and registered asylum seekers to work.[321] Interior Ministry lawyers argued that the authorities would not enforce the employment prohibition if the permit holder in question had been

[318] Most recently, the Israeli Interior Ministry has said that one of the principal benefits of the December amendments to the 1954 Anti-Infiltration Law will be to "reduce the economic incentive for infiltrators to [come to] Israel, since the potential for infiltrators currently present in the country of origin will know that if he chooses to arrive in … Israel otherwise than through a border station, he will … not be able to settle in the city centers … or to be employed in Israel. This will make it difficult to him to recoup the considerable expense incurred in his having arrived in Israel." "Explanatory Notes," 2013, pp. 3 - 4.

[319] Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben Dor, May 29, 2014.

[320] Human Rights Watch email correspondence with Israeli refuge lawyer, Yonatan Berman, May 11, 2014.

[321] Human Rights Watch email correspondence with Kav LaOved, May 26, 2014.

given the permit under Israel's "collective protection" policy and could "not be deported to their country of origin," which includes Eritreans and Sudanese.[322]

The court ruled that the question of enforcement was "theoretical" and "premature" because the state said it would not enforce the work prohibition against employers of permit holders covered under the temporary group protection policy until, at the earliest, sometime in mid-2011.[323]

Since the ruling, the Ministry of the Interior has not attempted to enforce the work prohibition against conditional release permit holders.[324] However, Kav LaOved, an Israeli NGO specializing in migrant and refugee work rights in Israel, said that Interior Ministry officials have taken a number of steps to deter employers from hiring permit holders, including telling employers inquiring about whom they can hire that they may not hire any permit holders, visiting businesses and telling employers not to employ permit holders, and telling municipalities not to hire them.[325]

On January 10, 2014 the newspaper *Yedioth Ahronoth* published an article referring to an anonymous source at local government level who said:

> The PIBA [Population and Immigration Border Authority] has recently issued a tender for recruiting inspectors to enforce the law, that among other things, prevents owners of restaurants from employing asylum seekers. The Authority is expected to increase the punishment of business owners and fine them. The goal is to cause restaurateurs and other business owners to stop hiring them. …. [This] will cause asylum seekers to not be able to find work and it will spur them to ask [to] leave the country."[326]

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[322] High Court of Justice, *Kav LaOved et al. v Government* (6312/10), January 16, 2011, unofficial English translation on file with Human Rights Watch.

[323] Interior Ministry lawyers said they would only enforce the prohibition against employing conditional release permit holders when a detention center for "infiltrators" opened near the Egyptian border. Ibid.

[324] Human Rights Watch email correspondence with Kav LaOved May 26, 2014.

[325] Ibid.

[326] Meirav Shlomo-Melamed, "Increased Enforcement," *Yedioth Ahronoth,* January 10, 2014, on file with Human Rights Watch.

Kav LaOved said such steps and statements continue to confuse many employers about whether they may hire Eritreans and Sudanese with valid permits.[327] In May 2014, the head of the Knesset's Foreign Workers Committee, said she had received many requests from employers asking the authorities to clarify the legality of employing "infiltrators."[328]

According to Kav LaOved, many of their clients holding conditional release permits have complained that some employers fire their Eritrean and Sudanese employees without notice or severance pay or engage in other exploitative practices, which they justify by referring to their lack of right to work.[329] UNHCR said that "asylum-seekers are often forced to work in conditions that would be deemed unlawful for Israeli citizens, for example where their employers fail to adhere to the laws regarding minimum wage or mandatory rest periods."[330]

Seven Eritreans and Sudanese described to Human Rights Watch how their employers had fired them without severance pay after they had joined the January 2014 demonstrations in Tel Aviv.[331] One man said he had been working for the same employer for five years taking care of the elderly but that his employer had fired him and 20 others for joining the demonstrations, all without severance pay.[332]

Conditional release permit holders have said that they have encountered similar problems when trying to obtain business licenses. Until 2010, conditional release permit holders were allowed to apply for business licenses, but in September 2010, the authorities decided only individuals with work permits would be allowed to seek business licenses.[333]

In May 2013, Tel Aviv municipal officers and immigration police raided businesses run by African nationals near Tel Aviv's central bus station, confiscating goods and welding businesses' doors shut.[334] On July 10, 2013, the Tel Aviv municipality closed down 10

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[327] Human Rights Watch email correspondence with Kav LaOved, May 26, 2014.

[328] Comments made by MK Michal Rozin during a public meeting in Eilat, May 27, 2014. Human Rights Watch email correspondence with Hotline, August 15, 2014.

[329] Ibid.

[330] UNHCR, Submission by UNHCR For the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review, Israel, 17th UPR Session, September 2013,

[331] Human Rights Watch interview with Eritreans and Sudanese, Tel Aviv, January 6 – 13, 2014.

[332] Human Rights Watch interview with Eritrean man, Tel Aviv, January 13, 2014.

[333]Human Rights Watch email correspondence with UNHCR, June 22, 2014.

[334] Haggai Matar, "Municipal authorities raid and shutter asylum seekers' businesses in Tel Aviv," *+ 972 Magazine*, May 13, 2014, http://bit.ly/1qfqITE (accessed May 28, 2014).

unlicensed businesses belonging to "migrants."[335] An Israeli activist who witnessed some of the closures told Human Rights Watch that it "was a humiliating process with officials with dogs and horses kicking out the owners and taking away their belongings in trucks."[336]

UNHCR reported that in mid-2013 the police "made concerted efforts to close private business enterprises owned by asylum seekers with conditional release permits and work permits."[337] In October 2013, the attorney general decided that "infiltrators" could no longer apply for business licenses, regardless of whether they held a work permit.[338]

International Law on Refugee and Asylum Seeker Work Rights

The Refugee Convention's use of the term "refugee" includes many asylum seekers because recognition of refugee status does not make an individual a refugee and only declares him or her as such.[339] In other words, a person with a well-founded fear of being persecuted upon return is, in fact, a refugee before any state officially recognizes him or her to be a refugee.

The Refugee Convention guarantees "refugees lawfully staying" in a host country "the most favourable treatment" with regard to the right to "engage in wage-earning employment" as "nationals of a foreign country in the same circumstances."[340] In the case of Israel, any foreign national can apply to obtain wage-earning employment in Israel.[341]

Refugees "lawfully staying" in a host country refers to refugees who are present in a host country on an ongoing basis and include recognized refugees and asylum seekers in a state that unduly prolongs their access to refugee status determination procedures or where they benefit from temporary protection for lengthy periods of time.[342] The Refugee

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[335] Eli Senior, "Operation Against Foreign Workers: 10 Businesses Were Closed in Tel Aviv," *Ynet*, July 10, 2013 http://www.ynet.co.il/articles/0,7340,L-4403590,00.html (accessed July 15, 2014).

[336] "Israel: New Pressure on Asylum Seekers to Leave," Human Rights Watch news release, July 23, 2013.

[337] UNHCR, Submission by UNHCR For the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review, Israel, 17th UPR Session, September 2013.

[338] Human Rights Watch email correspondence with UNHCR, June 22, 2014.

[339] UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees," HCR/IP/4/Eng/REV.1, January 1992, http://bit.ly/1qbVHyv (accessed September 3, 2014),para. 28. This position has been supported by various courts around the world and by leading refugee scholars.

[340] Refugee Convention, art. 17.

[341] Entry Into Israel Law, No. 5712 of 1952, art. 2; "Frequently Asked Questions Regarding B-1 Visa" Kan-Tor & Acco Global Corporate Immigration Law Firm, http://bit.ly/1vRlFMm (accessed August 27, 2014).

[342] James C. Hathaway, *The Rights of Refugees under International Law* (New York: Cambridge University Press, 2005), pp. 186 – 190.

Convention also requires states to give refugees who are "lawfully present" in the host country access to "self-employment" and access to "social security."[343]

Israeli law does not state that conditional release permit holders, including Eritreans and Sudanese, are unlawfully present in Israel and Interior Ministry lawyers have not made such an argument in court or elsewhere.[344]

Even if the authorities were to claim that all such permit holders were illegally in Israel, the term "lawfully present" should be defined in accordance with the requirements of the Refugee Convention which says that states shall not impose penalties on account of illegal entry or presence if the person concerned presents him or herself without delay to the authorities and shows good cause for their entry or presence.[345] As noted above, Israel has interviewed and registered all "infiltrators" entering Israel from Egypt over the past ten years and is therefore aware of their arrival and the reasons for their presence in Israel. In addition, asylum seekers lodging asylum claims or who register with the authorities under comparable procedures, such as to benefit from temporary protection status, should be considered lawfully present.[346]

The International Covenant on Economic, Social and Cultural Rights guarantees non-discriminatory access to work.[347] The Committee which oversees state implementation of the Covenant stresses that the right applies to "refugees [and] asylum seekers … regardless of legal status."[348] Any differential treatment based on nationality must be formally justified as "reasonable and objective" and the level of differential treatment must be proportionate to the states' aim.[349]

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343 UN Refugee Convention, arts. 18 and 24.

344 Section 2(a)(5) of the 1952 Entry into Israel Law does not say the recipients of permits under that section are unlawfully present in Israel; Human Rights Watch email correspondence with Israeli refugee lawyer, Anat Ben-Dor, July 23, 2014.

345 Refugee Convention, art. 31; James C. Hathaway, *The Rights of Refugees under International Law*, p. 178.

346 Ibid., p. 179.

347 International Covenant on Economic, Social and Cultural Rights (IESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, , ratified by Israel on October 3, 1991, http://bit.ly/1q0ezve (accessed July 14, 2014), arts. 2 and 6.

348 Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, U.N. Doc. E/C12/GC/20 (2009), http://bit.ly/1r18SQl (accessed August 27, 2014).

349 Ibid.

Limited Access to Healthcare

Israeli citizens and permanent residents have full free access to all primary and secondary healthcare under Israel's National Health Insurance Law, regardless of whether they are employed or pay taxes.[350]

In contrast, people not lawfully given residency status, including Eritreans and Sudanese, have access to only limited types of free healthcare. They are entitled to free emergency healthcare in life-threatening situations.[351] They are entitled to some free pre-natal care.[352] They are also entitled to free treatment for infectious diseases, notably tuberculosis and other infectious lung diseases, skin diseases, and, since early 2014, HIV.[353]

Non-residents are not entitled to free post-emergency follow-up care, to free post-natal care or to any other free primary or secondary healthcare treatment in established Ministry of Health clinics and hospitals.[354]

Since January 2013, a Ministry of Health clinic operated by a private company in Tel Aviv provides limited primary healthcare services to non-residents.[355] It also has an emergency room to deal with minor emergencies such as stitches, casts for broken limbs and X-rays.[356] Medical NGOs such as Physicians for Human Rights (PHR) and the Aid Organization for Refugees and Asylum Seekers in Israel (ASSAF) also provide certain types of primary healthcare throughout the country.[357] A few hospitals sometimes chose to provide some non-residents with secondary healthcare services.[358]

Since January 2014, UNHCR and the Ministry of Health have jointly operated a communal mental health project in Jaffa, Tel Aviv, which as of late May 2014 only had the capacity to see 60 patients a month.[359]

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[350] National Health Insurance Law, No. 5754 of 1994 http://www.health.gov.il/LegislationLibrary/Bituah_01.pdf (accessed July 14, 2014), section 3(a); Human Rights Watch interview with PHR, Tel Aviv, January 8, 2014.

[351] Patient's Rights Law, 1996, http://bit.ly/1nwQazj (accessed July 14, 2014), section 3B.

[352] They are entitled to vaccinations but not to ultrasound scans. Human Rights Watch telephone interview with PHR, May 20, 2014.

[353] Ibid.

[354] Ibid.

[355] Ibid.

[356] Human Rights Watch interview with PHR, Tel Aviv, January 18, 2014.

[357] Human Rights Watch interview with ASSAF, Tel Aviv, January 13, 2014.

[358] Human Rights Watch skype interview with PHR, May 20, 2014.

[359] Ibid.

Children without residency status can purchase primary and secondary health care insurance from a public healthcare provider.[360] As of early 2014, about 60 percent of non-resident children were not covered.[361]

Employers should pay national insurance contributions on behalf of any non-residents they employ to cover medical care costs in case of work accidents and three days of hospitalization costs for employees giving birth.[362] They should also pay for some of their employees' private health insurance costs.[363]

PHR has repeatedly asked the Ministers of Health and Welfare—including through legal proceedings— to use their discretion to apply the National Health Insurance Law and the National Insurance Law to a range of non-residents, including to asylum seekers, so that they can access many primary and secondary healthcare services and access welfare benefits, including invalidity benefits and access to social workers.[364] As of mid-Auguts 2014, the Minister of Health had only applied the National Health Insurance Law to certain groups of Palestinian women.[365]

Human Rights Watch spoke with eight Eritreans and Sudanese who described problems they had in accessing health care services.

A Sudanese man said:

> I had a free emergency kidney operation one year ago. But then they said I had to pay for all other help after that but I do not have the money for that. I have been in pain for a year now. Two weeks ago, the Interior Ministry offices in Beer Sheva said I had to go to Holot on January 29. I told them

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[360] Human Rights Watch interview with PHR, Tel Aviv, January 18, 2014.

[361] Ibid.

[362] National Insurance Law, No. 5755 of 1995 (consolidated version), on file with Human Rights Watch, section 378(a).

[363] Ibid, section 378(a)(b), as amended; "Foreign Workers Regulations: Prohibition of Unlawful Employment and Assurance of Fair Conditions," October 16, 2001, on file with Human Rights Watch, paragraphs 2(1) and (2).

[364] Human Rights Watch interview with PHR, Tel Aviv, January 18, 2014; Physicians for Human Rights, "On Social Residency: Decoupling Legal Status and Social Rights," January 1, 2011, http://www.phr.org.il/default.asp?PageID=99&ItemID=1006 (accessed July 15, 2014). Under sections 56(a)(1)(d) and 378(b)(1) of the National Health Insurance Law and the National Insurance Law respectively, the Ministers of Health and Welfare have the discretionary power to apply some or all of the rights contained in the laws to people not covered by the laws, which include non-residents.

[365] Human Rights Watch interview with PHR, Tel Aviv, January 18, 2014 and email correspondence with PHR, August 8, 2014.

about my health problem and all they said was 'if you are sick, go back to Sudan and if you don't do that, you are going to Holot.' I won't get help for my pain in prison so I think I will leave Israel.[366]

Another Sudanese man said that he did not have any health insurance and that when he went to hospitals, including the clinic for refugees in Tel Aviv, with very bad stomach pain, the staff said they could not help him and sent him away "to drink lots of water and to come back in two weeks."[367]

International Law on Refugee and Asylum Seeker Right to Healthcare

The Refugee Convention states that refugees "lawfully staying" in a state shall be accorded the same treatment as nationals in relation to "public relief and assistance" and "maternity, sickness, disability and old age."[368]

Israel is also bound by the International Covenant on Economic, Social and Cultural Rights (ICESCR).[369] The UN Committee on Economic, Social and Cultural Rights, which oversees its implementation, states that states should immediately guarantee nondiscriminatory access to health facilities, particularly for vulnerable or marginalized groups and that states should "respect the right to health by…refraining from denying or limiting equal access for all persons, including…asylum seekers and illegal immigrants."[370]
Israel has also ratified the Convention on the Elimination of Racial Discrimination (CERD).[371] The CERD Committee has called on states to "respect the right of non-citizens to an adequate standard of physical and mental health by… refraining from denying or limiting their access to preventive, curative and palliative health services."[372]

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[366] Human Rights Watch interview with Sudanese man, Tel Aviv, January 15, 2014.

[367] Human Rights Watch interview with Sudanese man, Tel Aviv, Janurary 15, 2014.

[368] Refugee Convention, arts. 23 and 24.

[369] See above, note 347.

[370] CESCR, General Comment No. 14, The Right to the Highest Available Standard of Health, U.N. Doc. E/C.12/2000/4 (2000), http://www.refworld.org/docid/4538838do.html (accessed July 23, 2014), para. 34.

[371] International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), UN Doc A/6014 (1966), entered into force January 4, 1969, ratified by Israel on January 3, 1979.

[372] CERD Committee, General Recommendation No. 30, Discrimination Against Non-Citizens, U.N. Doc. CERD/C/64/Misc.11/rev.3 (2004), http://bit.ly/1lzdH6T (accessed July 23, 2014) para. 36.

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By the time the Israeli authorities effectively sealed Israel's border with Egypt in late 2012, about 51,000 Eritreans and Sudanese had entered the country. Throughout 2014, thousands of them marched through Israel's streets and southern desert to protest against the authorities' policy of coercing them into returning to their countries where they face a serious risk of abuse at the hands of repressive governments. The unprecedented scenes underlined the longstanding issue of Israel's failure to secure tens of thousands of Eritreans and Sudanese the protection to which they are entitled under Israeli and international law.

Labeling them "infiltrators," the Israeli authorities have denied them access to fair and efficient asylum procedures, rejecting 99.9 percent of Eritrean asylum claims and 100 percent of Sudanese claims in stark contrast to the global refugee recognition rate of 83 and 67 percent. Ambiguous policies relating to work rights and severely restricted access to healthcare has further increased the pressure on Eritreans and Sudanese to leave. Since January 2013, almost 7,000 mostly Sudanese facing unlawful indefinite detention in Israel's Negev desert have buckled under the pressure and returned to Sudan, while a further 44,000 Eritreans and Sudanese in the cities live in daily fear of being detained until they agree to leave the country.

"Make Their Lives Miserable': Israel's Coercion of Eritrean and Sudanese Asylum Seekers to Leave Israel documents how some Sudanese returning to Sudan—which outlaws visiting Israel with punishments of up to ten years in prison—have been interrogated, detained and in some cases tortured, held in solitary confinement and charged with treason. It demonstrates that Eritrean and Sudanese nationals who agree to return to their own countries under threat of indefinite detention should be considered victims of refoulement, the forcible return in any manner whatsoever of a refugee or asylum seeker to a risk of persecution, or of anyone to likely torture or inhuman and degrading treatment. And it calls on Israel to end its unlawful indefinite detention policy, fairly process Eritrean and Sudanese asylum claims or grant them a different form of secure legal status, and respect their right to work.

(above) Eritreans and Sudanese on December 15, 2013 march in Israel's Negev desert to protest the Israeli authorities' unlawful indefinite detention policy aimed at coercing about 50,000 into leaving the country.

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(front cover) Eritreans and Sudanese stand at the perimeter of the Holot "Residency Center" in Israel's Negev Desert, January 9, 2014. Since mid-December 2013, the Israeli authorities have unlawfully detained thousands there indefinitely in an attempt to coerce them into leaving the country.

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