



HUMAN
RIGHTS
WATCH

“Make Their Lives Miserable”

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

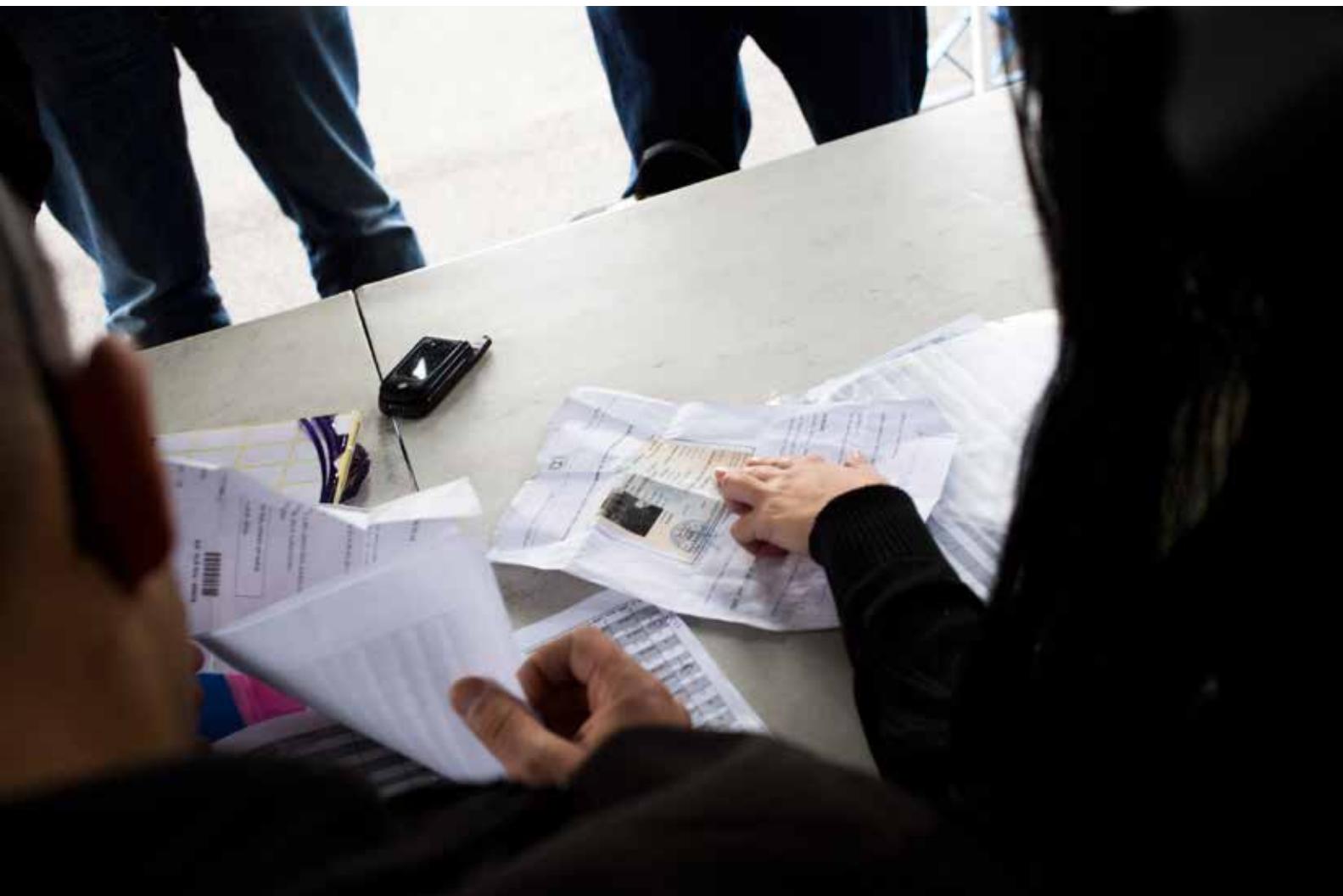
SUMMARY AND RECOMMENDATIONS

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. © 2013 Keren Manor/Activestills



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. © 2014 Keren Manor/Activestills

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. © 2014 Keren Manor/Activestills

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. © 2014 Tali Mayer/Activestills

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 country. 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.



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.

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. © 2014 Oren Ziv/Activestills

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

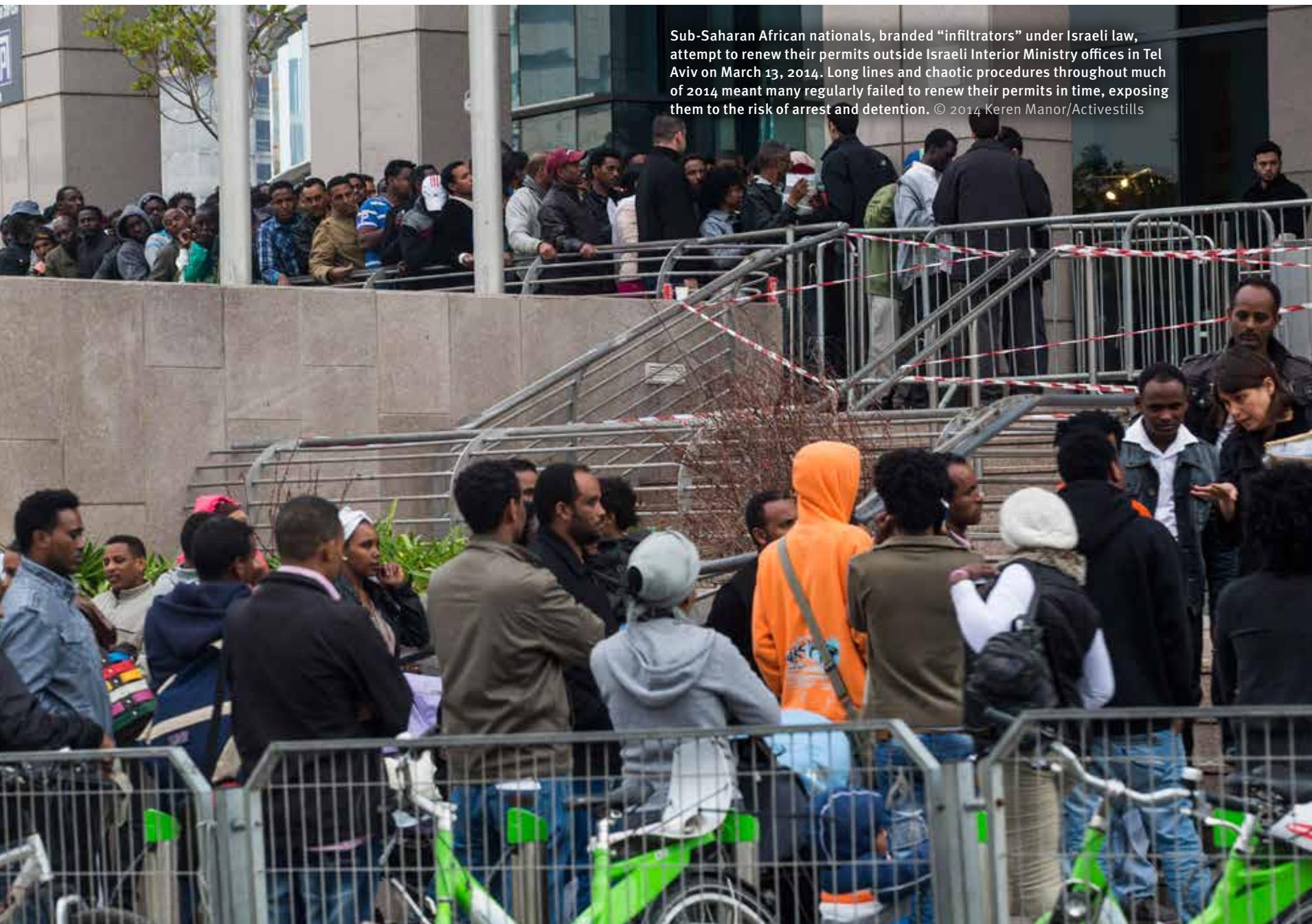
panic for the 50,000 people required to renew their permit every few months.

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. © 2014 Keren Manor/Activestills

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. © 2014 Keren Manor/Activestills

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 non-refoulement. 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 policies 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.



Eritrean and Sudanese women and children on a protest march against Israel's indefinite detention of Eritreans and Sudanese, Tel Aviv, January 15, 2014. An estimated 1,500 women and children marched from south Tel Aviv to the UN refugee agency offices and the US embassy. They called on the international community to support them. © 2014 Keren Manor/Activestills



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.

© 2013 Reuters/Amir Cohen

(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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