

1 April 2015

To Gilad Ardan

Adv. Yehuda Veinstein

Minister of Interior

Attorney General, MOJ

Re: Press Release of PIBA concerning the commencement of “initiated proceedings”  
for the departure of “infiltrators” held in Holot Holding Center to a third country

We write to you on behalf of ACRI, the Hotline for Refugees and Migrants, the Clinic for Migrants' Rights in the College of Law and Business, ASSAF, ARDC, Kav Laoved and PHR Israel. We write following yesterday's publication by PIBA (Population, Immigration and Border Authority), whereby Israel will begin in the next few days to enforce the departure of “infiltrators” held in Holot to third countries. According to the publication an “infiltrator” who refuses to leave to a country which is offered to him will be considered as not cooperating with his removal and will be detained according to the Entry to Israel Law.

This process, insofar as it will be implemented, represents the disintegration of Israel's legal and ethical obligations towards those deserving of international protection and an attempt to transfer the responsibility to other countries. Moreover, this process is a violation of the principle of *non-refoulement*, namely non-deportation of a person to a place where he faces danger. In order to protect this principle, international standards that deal with transparency and the receipt of appropriate guarantees of protection of human rights in the country of destination including access to asylum proceedings, were set. These standards have not been met in the present case.

We therefore demand the cancellation of this process and the prevention of detention of persons in need of international protection in order to force them to “agree” to their removal.

In light of the urgency of the matter, we will briefly outline our main arguments:

1. Only one month has passed since statistics were provided, showing that in the past five years over 17,000 asylum requests were submitted in Israel, yet less than 45 individuals were recognized as refugees. Now a plan to transfer thousands of persons in need of international protection to unknown countries, according to secret arrangements, through the use of detention as a tool to extort agreement, is revealed. Unfortunately, the move published yesterday, on the eve of the holiday of freedom, is a further expression of Israel's shirking of the obligations it took upon itself.
2. According to the PIBA's publication, this “process” will be used against those being held in Holot, Sudanese and Eritrean nationals who have not applied for asylum or whose asylum requests were rejected. These individuals are deserving of international protection not only

according to the Refugee Convention but also according to the Convention against Torture, the ICCPR, and the customary law principle of *non-refoulement*. The fact that there is no asylum request pending according to the Refugee Convention does not remove the international protections to which they are entitled.

3. Moreover, we remind you that throughout many years the State of Israel prevented nationals of Sudan and Eritrea from filing asylum requests, and when they began dealing with them, they did not convey this to each and every one of them when they reported to renew their visas. General notices to the Court do not constitute a publication to the general public (HCJ 1477/96 *Nimrodex v. Ministry of Trade and Labour*). It is worth noting that a letter from the Clinic for Migrants' Rights to the Director of PIBA requesting the authority to publicize the fact that filing of asylum requests by Eritreans and Sudanese is now possible was never answered (letter of Adv. Osnat Cohen-Lifshitz of January 2014).

We further note that the recognition rates of refugees in Israel are negligible and indicate that the system is unfair, a fact which is known to asylum-seekers and is a main factor impeding them from seeking asylum. In any event, according to statements of PIBA there is a "prioritization" for examining requests of those held in IPS detention centers, which diminishes the purpose of filing a request for those who are not being held in these facilities. By contrast, requests of those already held in Holot are processed, rejected and with lack of ability to earn a living, asylum-seekers held in "Holot" have difficulties retaining lawyers to appeal these decisions.

4. In light of the fact that we are dealing with a population whose members, on its face, face a risk to life or liberty if they were to be returned to their countries of origin, they are protected by the principle of *non-refoulement* (prohibition against deportation or return to a place where they would be in danger). This fundamental principle of international law obligates Israel when it considers removing a person from its territory. The prohibition on deportation or return is not limited only to removal to the country of origin but also applies when the individual is removed to a third country.
5. In light of the importance of this principle, there are binding standards in international law that apply when a country seeks to transfer a person deserving of international protection to a country that is not his country of origin. We note that in the past, when the Supreme Court dealt with the transfer of persons from Israel to a third country, it held that such agreements cannot be entered into unless they are in accordance with "the standards that are accepted by international law and with appropriate guarantees that will ensure to a degree of high certainty the safety of the returnees." (HCJ 7302/07 *Hotline for Migrant Workers v. Minister of Defense*, (July 7, 2012), para. 12).
6. According to international law, when a country transfers persons who are *prima facie* deserving of international protection (external to the Refugee Convention) to another country, it must ensure:
  - a. Respect for the principle of *non-refoulement* by the destination country, which includes non-deportation from the destination country to a place of danger.

- b. Access to proceedings that would allow the availability of international protection in the destination country and access to appropriate status in that country, including in order to prevent the situation termed “Refugee in Orbit”, in which individuals are continuously transferred from one country to another without the ability to find protection.
  - c. Respect for basic human rights in the destination country, which includes prevention of situations in which a person is coerced into returning to a place of danger due to inability to survive in the country to which he is sent. This also accords with international and Israeli human rights law.
- 7. In order to ensure all the above, international standards were set for transfer agreements. These standards obligate first and foremost the receipt of guarantees from the destination country and the establishment of a supervisory mechanism for their implementation by the sending country. Another necessary condition is transparency of the agreement, so that those bound by it will know what awaits them in the destination country, will be able to challenge their removal, and will be able to initiate judicial review against it. Furthermore, transparency is meant to ensure public criticism of the agreement and supervision by international actors and in itself is a guarantee for fulfillment of obligations by the destination country.
- 8. The “departure routes” that Israel developed are based on mysterious “agreements” that are kept in absolute secret, and even the identity of the destination countries is not revealed. This is fundamentally at odds with all principles described above and does not allow the respect for the human rights of those forced to depart. We regret the need to remind that these are not international agreements for the transfer of waste but rather for human beings with rights and human dignity.
- 9. This is especially worrisome in light of the information that has already been gathered concerning the fate of those who left from Israel to Uganda and Rwanda. For example, from interviews conducted with individuals who were sent to Rwanda it became clear that the Government of Rwanda does not allow those who arrive from Israel through the “safe departure route” to reside within its borders for more than a few days. Whoever remains after this period is at risk of detention and deportation to the country of origin. The only way to escape this fate is to enter a different country illegally (wherein they are also forced to reside without status).

See the Hotline and ASSAF's report “In the Absence of Free Will – The 'Voluntary' Departure Procedure of Asylum-Seekers in Israel”, from February 2015 which is available at:

[http://assaf.org.il/he/sites/default/files/Report%20-%20Voluntary%20Departure\\_1.pdf](http://assaf.org.il/he/sites/default/files/Report%20-%20Voluntary%20Departure_1.pdf)

- 10. These interviews also clarify that no one from the Israeli authorities contacted the deportees in order to ensure that their rights were protected, and to the best of our knowledge there is no supervisory mechanism in Israel on their situation in the destination country.

It should be noted that Rwanda never signed the Convention against Torture which prohibits the deportation of a person to another country where he will be at risk of being tortured (Article 3). Similarly, Uganda never signed the ICCPR.

11. In the absence of basic guarantees to ensure the rights of the deportees, individuals who are claiming international protection cannot be deported, nor can they be forced to leave under such agreements. We note that courts throughout the world have annulled agreements (which were publicized) once it became clear from their content and from the country information of the destination countries that in these destination countries there is no access to proper asylum procedures and no guarantees of basic human rights.

For example, the European Court for Human Rights invalidated the transfer of asylum-seekers from Belgium to Greece (*M.S.S. v. Belgium and Greece*, application no. 30696/09 (21 January, 2011)); furthermore, the European Court for Human Rights invalidated the transfer agreement signed between Italy and Libya (*Hirsi Jamaa v. Italy*, Application no. 27765/09 (23 February 2012)); the Supreme Court in the UK rejected the transfer of asylum-seekers from the UK to Italy (*EM (Eritrea) and others v. The Secretary of State for the Home Department*, [2014] UKSC 12); and the High Court of Australia rejected the transfer of asylum-seekers to Malaysia (*Plaintiff M70/2011 v. Minister for Immigration and Citizenship; and Plaintiff M106 of 2011 v. Minister of Immigration and Citizenship* [2-11] HCA 32, Australia: High Court, 31 August 2011.)

12. As a result of the illegality of removal of this sort, an individual who is not willing to be removed in this way, cannot be detained. In such a case, the refusal to be removed cannot be considered “lack of cooperation” with a removal proceeding and therefore he cannot be held in detention. A number of cases were decided in the past taking the position that the exercise of the right to seek asylum does not constitute “lack of cooperation” for the purposes of section 13F(b)(1) of the Entry into Israel Law (See Administrative Appeal (Haifa) 222/08 *Ploni v. Ministry of Interior* (June 10, 2008); Administrative Appeal (Haifa) *Lestor v. State of Israel* (November 6, 2007); Administrative Petition (Tel Aviv) 1268/09 *Hardem v. Detention Review Tribunal* (February 22, 2009)). This equally applies to the insistence on the right to international protection on the basis of other international conventions and principles of customary law. We remind you that the purpose of detention is to ensure the legal removal of a person (HCJ 7146/12 *Adam v. The Knesset*, (September 16, 2013)).

13. And yet, the State of Israel is trying again to apply illegitimate pressure in order to extract “agreement” and to achieve that which it is prohibited from doing and thus also to shirk its obligations under the Refugee Convention and the principle of *non-refoulement*. The new plan again uses detention as a tool that is meant to spur fear and despair among asylum seekers. This attempt is not new. This is exactly what was done with the legislation of Amendment 3 to the Anti-Infiltration Law, which mandated 3 years detention without trial; this amendment was nullified by the High Court of Justice. Despite the clear ruling of the Court, the Government insisted on continuing to detain asylum-seekers in an “open”-closed facility, within the framework of Amendment 4, a tool that in essence was “the same old Bess in a new dress” as stated by Justice Arbel. Now, after two constitutional rulings, the government goes back to using the same exact measure – this time, indefinite detention.

14. The new plan illustrates the government's disregard from the fundamental right to personal liberty and its insistence on continuing to detain those who almost finished "serving" their purposeless time in "Holot". We note that some of them are being held there from the days of Amendment 4; some were held in the past in Saharonim as "administrative punishment", which was later condemned by the Court, and now will be returned there. All of this is in contrast to the picture presented to the High Court of Justice in the pending petition against the new amendment to the Anti-Infiltration Law (HCJ 8665/14 *Deseta v. the Knesset*), according to which the infringement on the rights to freedom is proportional in light of their release within 20 months.
15. The transfer of human beings back and forth from Saharonim to Holot, from Holot to Saharonim, from detention under the Entry to Israel Law to detention under the Anti-Infiltration Law, from the Anti-Infiltration Law to the Entry to Israel Law, over a number of years and despite two constitutional rulings, cannot stand. We note that the detention of a person for the purpose of breaking his spirits is fundamentally wrong, constitutes a violation of international law and is in contrast to Israeli law as laid down in various other contexts (HCJ 8425/13 *Eitan – Israeli Immigration Policy v. Government of Israel* (September 22, 2014), para. 111 of Justice Vogelman's opinion). Moreover, "agreement" that is obtained in these circumstances does not relieve the State of its obligations to provide protection to those deserving of it.

In light of all of the above, the process announced yesterday is a dangerous one that will constitute a grave violation of Israel's obligations under the conventions to which it is a signatory and under customary law. The detention of those who refuse to "agree" to go to an unknown fate and fraught with danger is contrary to Israeli law and to a string of Supreme Court rulings.

On the eve of the holiday of freedom, we call of the government to refrain from this new policy and to fulfill the phrase "in every generation a man must see himself as if he left Egypt".

We ask for your urgent reply in order to allow us to consider our further steps.

Respectfully,

Atdv. Anat Ben-Dor

Adv. Aelad Cahana

CC:

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