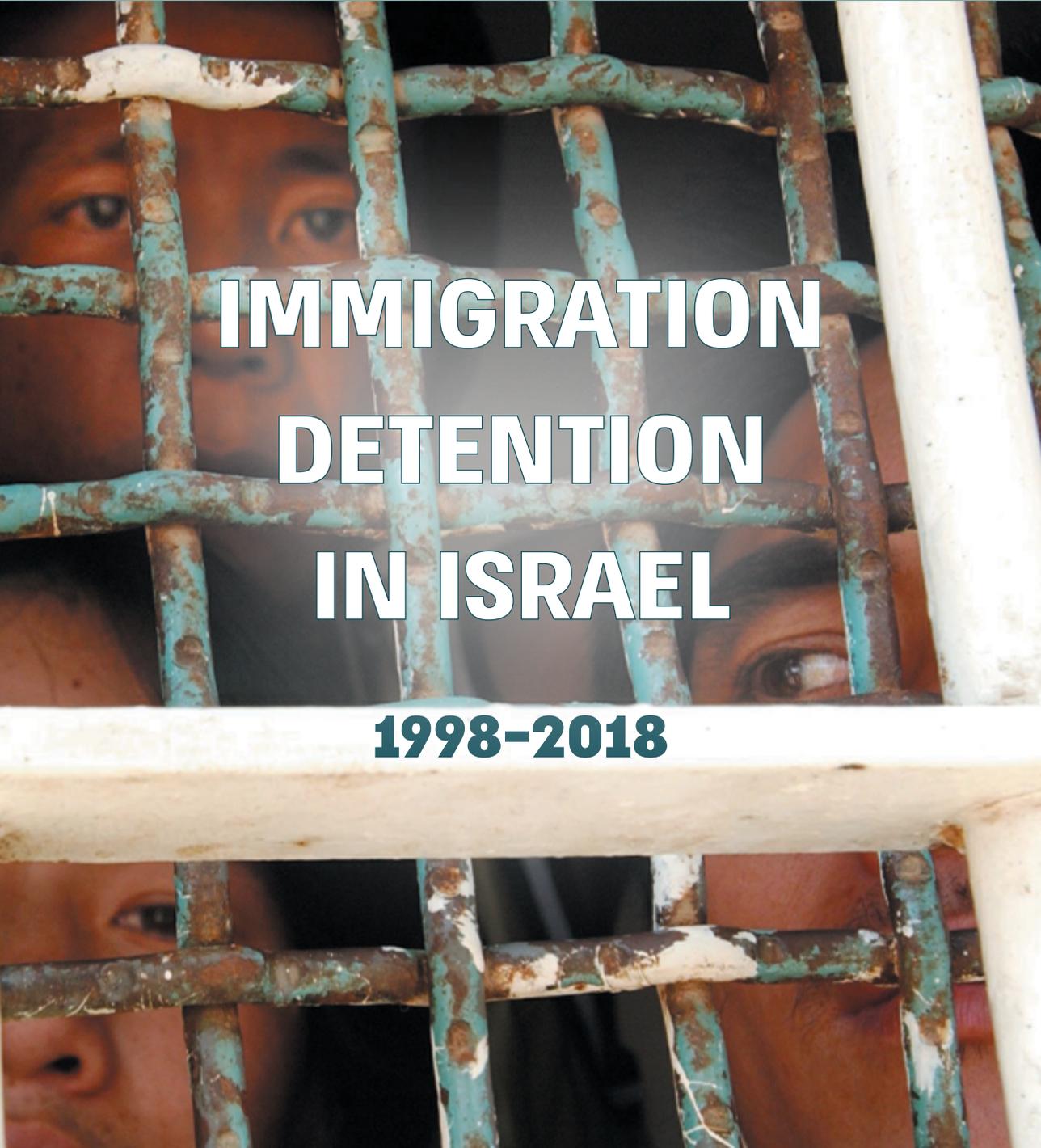


Hotline for Refugees and Migrants



IMMIGRATION DETENTION IN ISRAEL

1998-2018

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About the Hotline for Refugees and Migrants

The Hotline for Refugees and Migrants (HRM) is a nonpartisan nonprofit organization that aims to protect and promote the human rights of refugees and migrants and to prevent human trafficking in Israel through client services, detention monitoring, legal action and public policy initiatives.

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Abbreviations

HCJ – High Court of Justice

PIBA – Population, Immigration and Border Authority

IPS – Israel Prison Service

FOI – Freedom of Information

HRM – Hotline for Refugees and Migrants

ACRI – The Association for Civil Rights in Israel

PHRI – Physicians for Human Rights-Israel

UNHCR – United Nations High Commissioner for Refugees

HRM representatives entering Holot. Photo: Anat Vaknin Applebaum.



Forward

In 1998, journalist Einat Fishbein published a column in the newspaper *Ha-Ir* (The City) about migrant workers, called at the time "foreign workers," which was titled "The New Tel Avivians." Following the publication of the column, the paper opened a voicemail intended to allow workers to ask for help after they had been detained without anyone being aware of it. The detainees did not understand their legal status and the recourses available to them, were not familiar with the law or the relevant regulations, were not eligible for legal representation or legal assistance from the State, and did not know if and when they would be released from prison. Among the messages received in the voicemail were three messages from Israeli women who wished to help, and who ended up establishing a hotline the detainees could contact. In time, additional volunteers joined, establishing the Hotline for Refugees and Migrants (HRM), known at the time as the Hotline for Foreign Workers in Detention and which later changed its name to the Hotline for Migrant Workers.

HRM's volunteers aimed to reach a place that no one had been able to reach thus far – Maasiyahu prison, where migrants were detained for many months and even years, without trial, without representation, without judicial review and without assistance. Over the years, Maasiyahu prison was shut down and other facilities were opened and closed. HRM, which had become an established NGO, reached all of these facilities, assisting thousands of people detained there, identifying victims of trafficking for sex work, survivors of slavery and forced labor, refugees, survivors of torture, minors, people who have fallen victim to exploitation, mental health patients, migrants who were detained for many years without anyone being aware of it, and people who were brutalized during their arrest. Due to these visits, HRM recognized patterns in migration; assisted the detainees; made their stories public knowledge to promote a change in policies through advocacy, media work and strategic litigation; and published numerous reports and data about the detention conditions of undocumented migrants in Israel.

Today, HRM stands at the forefront of the struggle against human trafficking in Israel, protection of refugee and migrant rights in general, and their right to liberty

3 Immigration Detention in Israel

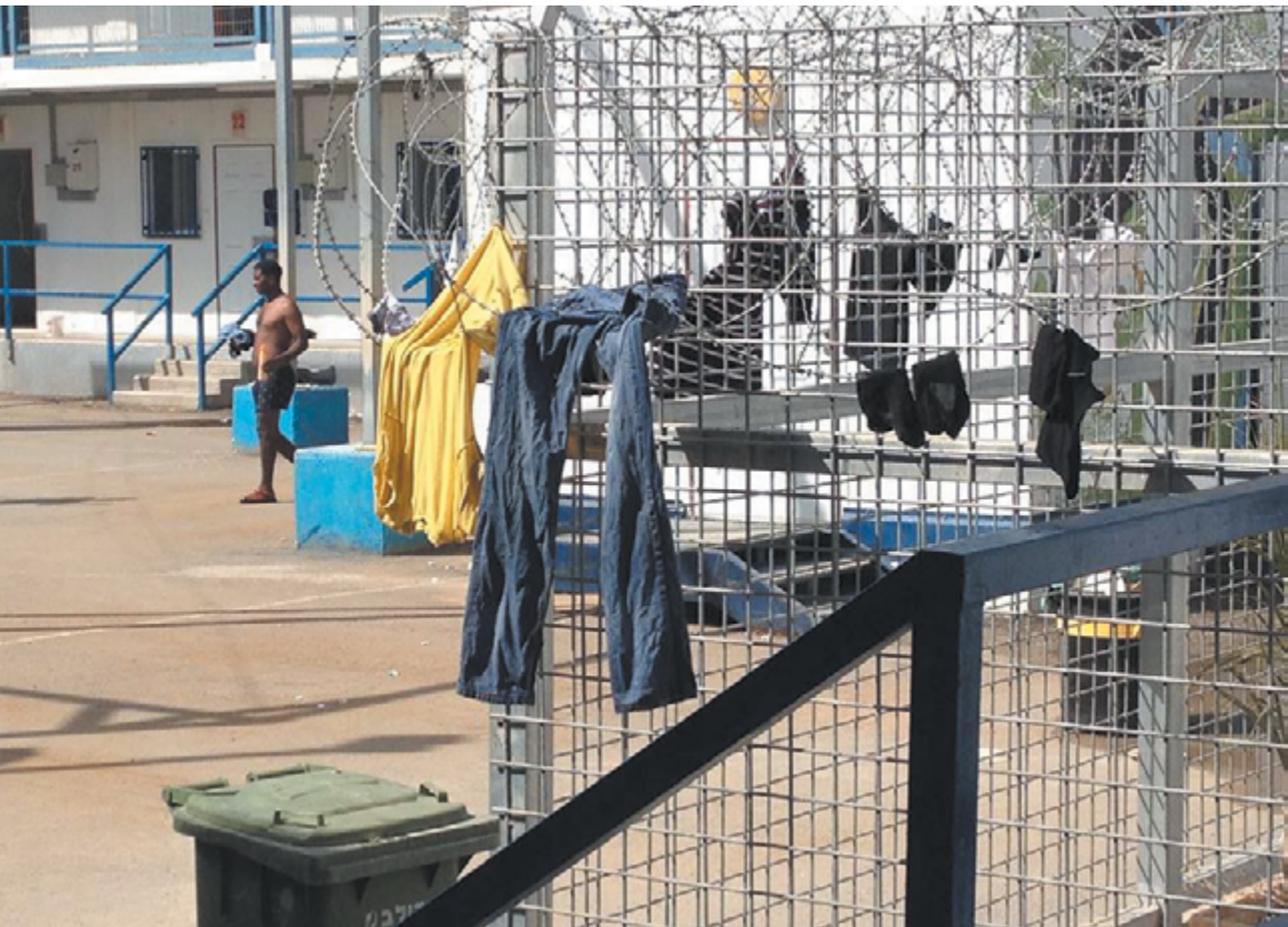
in particular. Despite our many accomplishments, together with our partners, over the years the default policy of the Israeli government continues to be the detention of undocumented migrants and asylum seekers, even when their deportation is not possible.

This report reviews the main patterns of detention of undocumented migrants and asylum seekers over the past 20 years and is based on previous reports published by HRM,¹ responses to Freedom of Information (FOI) requests, publications and reports of the Population, Immigration and Borders Authority (PIBA), the Israel Prison Service (IPS), the Ministry of Justice, and publications of the Association for Civil Rights in Israel (ACRI).²

¹ See, the Hotline for Refugees and Migrants (HRM), reports: <http://bit.ly/2PWkp9o>.

² See, the Association for Civil Rights in Israel (ACRI), the legal archive, asylum seekers and refugees: <http://bit.ly/2tgprpg>; ACRI's legal proceedings – landmark cases on migrant rights: <http://bit.ly/34nDtsy>.

Saharonim. Photo: Ybrah Menan.



Detention Facilities for Undocumented Migrants

Active Detention Facilities

Saharonim

Located in the Negev near Nitsana, next to the Egyptian border, Saharonim holds only men. Saharonim was established in 2007 to detain African asylum seekers who entered Israel from Egypt. Until June 2012, Saharonim had eight wings of tents, each of which could hold up to 250 detainees (2,000 altogether). In June 2012, six new wings were opened, replacing the old wings. At the time, regulations allowed holding of up to 1,000 detainees in Saharonim prison.³ However, due to the reduction in the number of those detained and the annulment of the deportation plan,⁴ some of the wings were converted to house Palestinians who entered Israel without a permit (termed "illegal residents,") who were transferred from nearby Ktziot Prison to provide detainees with greater living space, following the HCJ ruling on the case 1892/14 (henceforth, the "HCJ Living Space Ruling").⁵

Givon

Located in Ramle, Givon Prison opened in 2009. All undocumented migrants detained prior to their deportation who were held until then in Massiyahu, Neve Tirtsa and Nitzan prisons, were transferred to Givon. The prison holds inmates who have been convicted of criminal offenses for which they have been sentenced for up to five years, as well as undocumented migrants awaiting their deportation. The two populations are held in separate wings. The prison holds women, mainly migrant workers, held in a separate wing, at times alongside their children. The facility can hold up to 400 undocumented migrants.

³ Josh Briner, *Prison Officials Warn: No Room to Jail Thousands of Asylum Seekers Who Refuse to Leave Israel*, Haaretz, February 4, 2018: <http://bit.ly/35rNnnR>.

⁴ For more, see HRM, *Detention of Migrants and Asylum Seekers in Israel, Annual Monitoring Report 2018*, March 2019, chapter 5: <http://bit.ly/34s3S26>.

⁵ HCJ 1892/14 *ACRI vs. the Minister of Internal Security*. For more, see: HRM, *Detention of Migrants and Asylum Seekers in Israel, Annual Monitoring Report 2017*, March 2018, chapter 5: <http://bit.ly/2r1LijK>.

Yahalom

The Yahalom detention facility, located at the Ben Gurion Airport, is the only detention facility that is operated by PIBA and not by IPS. The facility was established to hold migrants and tourists whose entry to Israel was denied for several days, until they can be deported to their countries of origin. In recent years, however, hundreds of undocumented migrants arrested inside Israel were transferred to Yahalom to await their deportation, held there for weeks and even months. According to information provided by PIBA in June 2, 2019 in response to a FOI request, Yahalom has nine rooms of different sizes, including two rooms that do not meet the requirements of the HCJ Living Space Ruling.⁶ There is a total of 52 beds at the facility. Except for HRM attorneys who have limited access to the facility,⁷ other HRM representatives do not have access to Yahalom.

Facilities Previously Holding Refugees and Migrants

Holot

The Holot facility was opened in December 2013 and closed in March 2018. The facility was located near Saharonim Prison and held only male asylum seekers from Sudan and Eritrea, under the various amendments of the Anti-Infiltration Law. Israeli authorities described the facility thus: *"The open center is a residence for infiltrators who received a detention order from a border control officer, where they are provided with appropriate living conditions and their needs are met with health and welfare services, voluntary employment, job training and educational and leisure activities."*⁸ Holot was able to hold about 3,300 detainees in three separate wings, but throughout its period of operation, it was rarely fully occupied.

Ktziot

Ktziot Prison, located next to Saharonim Prison near the Egyptian border, houses detainees and prisoners in tents. It holds both security prisoners and those held for criminal offenses. In 2004–2007, asylum seekers were also held there after crossing the border. At the time, the facility could hold up to 500 asylum seekers in two wings, each of them comprised of huge tents that held 250 beds. After the Saharonim

⁶ Ibid.

⁷ See footnote 4, chapter 4.

⁸ HCJ 4386/16 *Tesfahiwet vs. IPS Commissioner et al.*, initial response by the respondents, November 17, 2016, paragraph 7. Available in Hebrew (PDF): <https://bit.ly/2sVVKqo>.

Facility opened in proximity to Ktziot, most asylum seekers were transferred there. The IPS, however, continued to hold asylum seekers, in varying numbers, in Ktziot, transferring them back and forth from Saharonim until late 2013.

Michal

The Michal Detention Facility for women was established in the Hadarim compound in Hadera in 2002 and was operational until 2009. It held up to 120 women.

Matan

The Matan Facility for unaccompanied minors was opened in August 2010 in the building which had recently housed the Michal Facility. The facility held up to 70 minors ages 13-18. The minors were detained in cells with five bunk-beds, each holding a total of ten detainees. Until May 2011, the detainees told HRM that they were allowed to spend only an hour per day outside of the locked cells. Following an intervention by HRM, the minors were allowed to move freely during all hours of the day and were only locked in their cells at night. Six educators taught the children Hebrew, English and life skills. During a visit conducted by the Foreign Workers Committee of the Knesset in September 2011, the MPs were told by the warden of the facility that 19 minors attempted suicide during their detention period there.⁹ The facility was shut down in August 2013.

Tzohar

Tzohar was a detention facility for undocumented migrants established in 2001 in the Negev. It was operational until 2006 and could hold approximately 150 detainees.

Eshel, Dekel, Ela and Ohalei Keidar

This compound of prisons holding criminal offenders is located south of Beer Sheva. Asylum seekers were moved to these prisons from Ktziot and Saharonim, at times detained alongside criminal offenders, in violation of the Entry of Israel Law,¹⁰ due to claims that they were suicidal, in need of mental health support, carriers of AIDS, required close health monitoring, or due to "disciplinary infractions."¹¹ From 2010-

⁹ See the protocol of the Foreign Workers Knesset Committee no. 67 from September 22, 2011, Available in Hebrew: <http://bit.ly/2Nwn9Ky>.

¹⁰ See below in chapter 2: The Entry to Israel Law and Establishment of the Detention Review Tribunal.

¹¹ For more information, see: HRM, *Far from Sight: Migrants and Asylum-Seekers Detained in Israeli Criminal Prisons*, February 2014: <http://bit.ly/2RX8V88>.



Holot. Photo: Activestills

2015, HRM identified, met and worked to release asylum seekers who were detained in these facilities.

Nitzan

Nitzan is a prison holding criminal offenders in which many undocumented migrants were detained between 1997-2001. In the first several years, migrants were held in tarp tents in a fenced-off section, separate from the criminal offenders, but were later held in the same cells with convicts. The facility could hold up to 200 undocumented migrants. Nitzan Prison is located in the Ayalon compound in Ramle, which also contains Givon Prison.

Maasiyahu

Maasiyahu is a prison holding criminal offenders which also held a large number of undocumented migrants from 2000-2009. It had the capacity to hold up to 400 undocumented migrants at any given time. The prison is located near the Ayalon compound in Ramleh.

Neve Tirza

Neve Tirza is a prison holding women convicted of criminal offences and is also located inside the Ayalon Compound. From 1997-2002, it held undocumented migrant women, mostly victims of trafficking for sex work. It had the capacity to hold up to 50 undocumented migrants.

Renaissance

Renaissance was a lavish 5-star hotel in Nazareth that was converted into a detention facility operated by a private company and not the IPS. Undocumented migrants were held there from 2003-2004. The facility could hold up to 500 detainees, with eight detainees per cell. Although it had formerly been a glamorous and new hotel, the conditions in Renaissance were among the worst compared to other detention facilities operated by the IPS, due to extreme overcrowding in the facility and the attempts of the operating company to save costs on food and water heating.

The Entry to Israel Law and the Detention Review Tribunal

The Entry to Israel Law regulates the detention of undocumented foreign citizens or those who violated the conditions of their visa. Their detention is overseen by a specialized legal entity, the Detention Review Tribunal. The purpose of detention under the Entry to Israel Law is not punitive, but preventative, i.e., to ensure the departure of a person from Israel after a deportation order has been issued. The default policy is that once a deportation order is issued, undocumented migrants should be detained until their deportation. The authority of the Detention Review Tribunal to release those held under the Entry to Israel Law is limited to four grounds: if the Tribunal is convinced that a person is staying illegally in the country due to a mistake and not deliberately; if the Tribunal is convinced that a person will leave Israel willingly on the deportation date, and there will be no problem to find them if they fail to do so; if the Tribunal is convinced that, due to their age or physical condition, continued detention might be harmful to their health, or for other humanitarian reasons that justify their release on bail; or if they had been in custody for more than 60 days. Even in these cases, the law does not authorize the Tribunal to release a person who displays a lack of cooperation or whose release may risk the State's security, or the safety or health of the public. Those who do not cooperate with their deportation are effectively held in open-ended administrative detention, sometimes lasting many years.¹² The decision of Tribunal adjudicators to release detainees depends on their interpretation of the four grounds for release, and those have varied from one adjudicator to the next over the years.

The Entry to Israel Law was enacted in 1952 to regulate the entry and stay of non-citizens or residents in the country.¹³ In the late 1990s, hundreds of undocumented migrants were arrested on a monthly basis and held in detention under the Entry to Israel Law until their deportation. The deportation of many was delayed for various reasons, such as a lack of documents and financing for the travel, or

¹² For more information, see: HRM, *Forgotten in Prison: The Prolonged Detention of Migrants*, December 2016: <http://bit.ly/2rQuvAt>.

¹³ The 1952 Entry to Israel Law.



Immigration agent. Photo: Activestills

legal proceedings against their deportation, such as applications for asylum. Many remained in detention for weeks, months and even years. Without legal representation, undocumented migrants were held for prolonged periods without any judicial review concerning the legality, the duration or the conditions of their detention and without any alternatives to detention.

In 1998, ACRI filed a petition on behalf of three asylum seekers from Sierra Leone who were held in detention for three months.¹⁴ The petitioners demanded that the State establish a mechanism of judicial review of detention under the Entry to Israel Law. During the legal deliberations concerning the petition, in 1999, Adv. Sarah Ben Shaul-Weiss, an employee of the Ministry of Interior, was appointed to provide judicial review of the detention. She examined the detention of many detainees on a daily basis. HRM reports from this time show that the Ministry of Interior interfered in the work of Adv. Ben Shaul-Weiss, but her work resulted in the release of detainees whose humanitarian circumstances were particularly dire, and allowed workers who held valid visas to rejoin the workforce, after they had been arrested unlawfully.¹⁵ In addition, HRM was able to raise a public firestorm at that time after an undocumented migrant, held in detention for ten months and whose nationality was disputed, hung himself.

In 2001, following the HCJ petition on the matter of the asylum seekers from Sierra Leone, the Entry to Israel Law was amended, and the Detention Review Tribunal was established. The amendment to the law stipulated that a detention order would only be issued after a person is allowed to make their case, and that the Detention Review Tribunal would provide judicial review after 14 days from the moment of the arrest.¹⁶

The judicial review entity was replaced with the Detention Review Tribunal. Adv. Ben Shaul-Weiss continued to serve, now under the title of a tribunal adjudicator, and another adjudicator, Adv. Sharon Lary-Bavly, was appointed to the same position. Soon after, many concerns arose regarding the Tribunal's mode of operation: the two adjudicators were the only ones to hold the hearings, without

¹⁴ HCJ 4963/98 *Hasan Sasai et al. vs. the Minister of Interior*.

¹⁵ And see also: HRM, *For You Were Strangers: Modern Slavery and Trafficking in Persons in Israel*, February 2013 <http://bit.ly/2PRtStt> ; HRM, *Immigration Administration or Expulsion Unit?*, May 2003: <http://bit.ly/2qVzIMg>.

¹⁶ Amendment no. 9 to the Entry to Israel Law – 2001.

any infrastructure; a physical tribunal hall was not established; and they did not have administrative support or interpreters. As a result, hearings were held using gestures, the detainees unable to express themselves and present their case. The hearings were also held in degrading conditions, for example, in a car parked near the detention facility.¹⁷ However, due to the frequent visits of HRM representatives in the detention facilities, they could attend and even participate in the hearings. This active participation brought about the release of many migrants, whether based on extraordinary humanitarian circumstances, or because they were entitled to a legal work permit or refugee status.

In 2002, the prime minister at the time, Ariel Sharon, announced a plan to arrest and deport 50,000 undocumented migrants living in Israel at the time, and the establishment of a special police unit tasked with locating and detaining them. For the purpose of implementing the plan, the "Immigration Administration" was established, while the actual task of deportation was carried out by the Israeli Police, which dedicated 400 policemen for the task.¹⁸ The capacity of Maasiyahu, the only facility that held undocumented migrants at the time, was expanded from 260 to 400; the Renaissance Hotel in Nazareth was converted into a detention facility with a holding capacity of 500 undocumented migrants; in the south, Tzohar Prison was established, with a capacity of 150 detainees; in Hadera, Michal Prison was opened in a building used by the Israeli Police, converted into a special detention facility, with a holding capacity of 120 undocumented migrant women.

HRM filed a petition against this plan, fearing that the arrests would be accompanied by gross human rights violations, unjustified arrests of workers holding valid visas, police brutality and prolonged detention of people who could not be deported. The petition also demanded that the State address the overcrowding crisis in the facilities holding those slated for deportation.¹⁹ The petition was rejected after the State committed to establish another detention facility, to ensure that detainees would not be forced to sleep on floors due to overcrowding; to hold those awaiting deportation separately from detainees held on criminal charges; and to appoint an

¹⁷ Annual State Comptroller report 55 B for the years 2004, p. 374.

¹⁸ The Immigration Administration was the first step in the establishment of PIBA as it was recommended in a report published on July 2002 by the inter-ministerial committee on the question of migrant workers, chaired by Yuval Rachlevsky.

¹⁹ HCJ petition 9402/02 *HRM vs. the Government of Israel*.

additional adjudicator to the Detention Review Tribunal.²⁰

In addition, in 2002, HRM and ACRI filed a petition against the 2001 9th amendment to the Entry to Israel Law, demanding that the grounds for release be altered so that in any case when a deportation could be guaranteed, for example, by setting bail, the person would not be detained. The petition further demanded that judicial review be exercised at shorter intervals than those stipulated in the law.²¹ Finally, the petitioners demanded that the Detention Review Tribunal be abrogated and that the authority for judicial review be given to the regional administrative courts. This demand stemmed from the deficiencies of the Tribunal, and due to its subordination, according to the law, to the Ministry of Interior, as opposed to the Ministry of Justice. Following the petition, the Tribunal was transferred to the authority of the Ministry of Justice; resources were allocated to establish halls for the Tribunal and the appointment of administrative support staff; the detainees were to be brought before judicial review as soon as possible for an initial review, and not later than 96 hours from the time of arrest; translation services were provided; and it was determined that the Tribunal would hold review hearings of ongoing detention every 30 days. Following an additional petition,²² these amendments were codified into law in 2008, in the 17th amendment to the Entry to Israel Law.²³

Due to the advocacy work of HRM and ACRI in the Knesset's Interior Committee, the Entry to Israel Law also codified the right to legal representation of detainees by individuals who are not attorneys, as long as it is done *pro bono*. This provision in the law allows HRM to represent the detainees, bringing about the release of thousands over the years. Detainees lack legal representation because most of them have no money, do not speak the language, do not have an understanding of their rights and the judicial process, and are unfamiliar with organizations that work to protect their rights. Even when they understand that such representation may benefit them, a series of obstacles often prevents them from reaching out to an attorney and paying

²⁰ Shmuel Deklo, *Petition to the HCJ to Cancel Decision to Deport 50,000 Foreign Workers*, Globes, November 6, 2002, <http://bit.ly/2qDV1fs>, (Hebrew). See also footnote 15, *Immigration Administration or Expulsion Unit?*

²¹ HCJ 6535/02 *HRM and ACRI vs. the Minister of Interior*.

²² HCJ 1461/06 *HRM and ACRI vs. the Minister of Interior*. The petition was vacated at the request of the petitioners after the State committed to amending the law. More on HCJ 6535/02 and HCJ 1461/06 see on ACRI's website, Available in Hebrew: <https://law.acri.org.il/he/464>.

²³ And see also: HRM, *The Detention Review Tribunals*, December 2014: <http://bit.ly/38M0lcC>.

for their services.²⁴

Detainees in need of representation often could not turn to the HRM for help because they could not afford to buy a calling card and due to the prohibition of holding cell phones in detention. By comparison, a person accused of a criminal offense who lacks the economic means to hire counsel, can request the court to appoint an attorney, and in some cases, a public defender will be appointed to assist him without even asking for such representation. On the other hand, those held in immigration detention are not entitled to legal assistance, even when held for many months or years for the purpose of deportation, even when the deportation is not made possible. Since 2007, following legal proceedings of HRM and ACRI, unaccompanied minors and recognized victims of human trafficking or forced labor are entitled to legal representation of the Legal Aid Department at the Ministry of Justice, at the expense of the State.²⁵

24 Even those who manage to finance attorney fees and their request for release is granted, will not be granted compensation for their legal expenses, since article 13 22(A) of the Entry to Israel Law prevents the Tribunal from ordering the payment of legal fees and expenses.

25 See chapter 8 below: Landmark Proceedings against the Detention of Refugees and Migrants. Immigration enforcement. Photo: Activestills.



Access to the Detainees

Since its establishment in 1998, HRM has visited detainees in the various detention facilities. The entry of HRM representatives to these facilities was regulated vis-a-vis the wardens of each facility, and working procedures were established shortly after: HRM would submit the list of representatives and once approved, they could come at pre-determined days and meet all the detainees in the facility, if time allowed for it. This is how visits were conducted over the years in Nitzan, Renaissance, Tzohar, Maasiyahu and Givon. In all of these facilities, HRM representatives could freely enter the wings where the detainees were held under the Entry to Israel Law and Anti-Infiltration Law. IPS representatives asked and would receive the HRM's assistance in informing the detainees regarding their legal standing, clarifying the ever-changing laws and regulations. Such mediation and information-sharing at times prevented hunger strikes of detainees. This access allowed HRM to witness first-hand the conditions in which the detainees were held.

Due to its visits to these facilities over the years, and the unrestricted access they enjoyed, HRM representatives were able not only to provide direct assistance to the detainees, but also expose many injustices. This is how HRM was able to identify and expose the phenomenon of trafficking of women for sex work, as well as trafficking of workers who were detained and deported from Israel because their employers "sold" or "rented" them without their knowledge, thus violating their visa conditions. HRM also discovered the phenomenon of employers who handed their workers to the police to avoid paying them their wages. The information collected by HRM over the years had crucial impact on the lives of those slated for deportation. Among other things, HRM's work furthered the struggle against the trafficking of women in Israel, affected the treatment of the authorities of migrants and led to a decision to employ inspectors of the Industry, Trade and Labor Ministry in detention facilities to ensure that workers are able to collect their salaries from their employers prior to their deportation.

In early 2006, when HRM began visiting Ktziot, and in the second half of 2007, when its representatives began visiting Saharonim, they were initially granted unlimited

access to the wings of those facilities as well. IPS, which understood the importance of the information provided to the detainees, also allowed HRM representatives to assemble all the detainees in each wing, to explain to them the various regulations and inform them about their rights.

On January 7, 2008, HRM and fellow human rights organizations filed a petition to the HCJ concerning the harsh detention conditions of child asylum seekers indefinitely detained in Saharonim.²⁶ Before the petition was filed, HRM representatives would visit Ktziot and Saharonim about once a week. After the petition was filed, the administration of Saharonim denied HRM's requests to visit the facility for two entire months, with no explanation.

HRM's legal adviser at the time, Adv. Yonatan Berman, addressed the Saharonim Detainees Officer, asking to approve the entry of HRM representatives to assist the detainees, and emphasized that in proceedings at the Detention Review Tribunal, a detainee is entitled to be represented *pro bono* by any person, in accordance with article 13(20) of the Entry to Israel Law. For the purpose of legal representation and counsel, he explained, HRM personnel need to meet the detainees. The entry request was denied by the Detainees Officer in Saharonim, and HRM representatives were only allowed entry to the Detention Review Tribunal, but not inside the wings.

Only repeated appeals to the IPS by the chairman of the Knesset Committee on Foreign Workers at the time, MK Ran Cohen, and officials in the Prime Minister's office, led eventually to the approval of HRM's entry to Saharonim in late February 2008. However, the entry was approved only for the purpose of meeting outside the wings and only with detainees whom HRM was already representing, as well as to represent detainees who were brought on that day before the Detention Review Tribunal.

In its response, the Security Office at the Ministry of Internal Security stated that "the meetings of the petitioner's employees and volunteers will be made possible for the purpose of their representation before the Detention Review Tribunal. The meeting will be held in the offices and not inside the wings." However, only in 2012, proper offices were set up for that purpose. Until then, during all those years, the meetings would be regularly held, every week, around a picnic table set outside the offices of the administration ward, without shade from the elements, violating the

²⁶ HCJ 212/08 *HRM et al. vs. the IPS et al.*

privacy of the clients. Despite the harsh desert conditions, HRM continued to arrive regularly to provide the necessary assistance to the detainees.

In early June 2012, the 3rd amendment to the Anti-Infiltration Law came into effect.²⁷ At the same time, authorities launched a wide-scale arrest campaign of members of the South Sudanese community, after the petition of Human Rights organizations to extend the temporary group protection accorded to them was rejected.²⁸ Many were arrested and moved to Saharonim and Ktziot. HRM again asked be allowed entry to meet the detainees who were held in Saharonim at the time. This request was approved by the relevant officers in both facilities. However, on June 12, 2012, when HRM representatives arrived at the gates of the detention facilities near the Egyptian border, after hours of travel from central Israel, and despite coordinating their entry in advance, their entry was rejected with no explanation.

Following this, the HRM executive director at the time, Adv. Reut Michaeli, addressed the IPS, asking them to allow HRM to meet the recently arrested as soon as possible. She warned that if the IPS would not allow such meetings, there would be a real concern that the detainees might be deported without having the opportunity for legal counsel. She argued that in these circumstances, the demand that HRM provide "a detailed list with the names and detainee numbers means, effectively, foregoing the detainees' right to legal representation by a person who is not an attorney. Those who have been arrested and transferred from their place of residence to Saharonim or Ktziot do not have the ability to contact the HRM, both because they probably do not know who to turn to, and because of the simple fact that they technically have no way to call our offices (as it is known that detainees do not have cell phones)."²⁹ In its response, the IPS maintained the demand that HRM provide detailed lists including detainee numbers for pre-approval.

Despite this, when HRM attempted to coordinate, in advance, a visit to Ktziot in late June 2012, while including detainee numbers as requested by the IPS, they were instructed this time to present a power of attorney of the detainees they wish to meet, though they could not meet with them in order to obtain the signed power

²⁷ See chapter 7: Detention of Asylum Seekers and the Anti-Infiltration Law.

²⁸ Administrative Appeal 53765-03-12 Assaf – *Aid Organization for Refugees et al. vs. the Minister of Interior*.

²⁹ Letter of Adv. Michaeli from June 13, 2012, to the commissioner of the IPS, the head of the Prisoner's Department and the legal counsel of the IPS.

of attorney. They were also told that they would be allowed to meet detainees only during hearings at the Detention Review Tribunal, though such representation requires preparatory meetings. Later, the IPS applied this requirement to HRM visits in Saharonim as well.

HRM petitioned the HCJ against this decision.³⁰ Following these legal proceedings, the IPS agreed to amend the regulation in a way that would allow individual meetings with the detainees whose names were provided to the IPS in advance. This regulation was applied to Givon as well, where up until that point, HRM had been able to conduct unrestricted visits, including inside the wings. HRM's entry to the detention facilities is regulated in this manner until today.

Denying HRM access to the wings posed two serious problems. The first – detainees were now unaware of HRM and the assistance it provides, and particularly in Givon where most undocumented migrants set to be deported from Israel are held, for a short duration, without being informed of their rights. This harms HRM's ability to identify new patterns of human trafficking, exploitation and other human rights violations, and its ability to monitor the detention conditions is impaired. The second issue pertains to conducting meetings between HRM and the detainees: although the IPS makes an effort to facilitate the meetings between HRM representatives and the detainees, in reality, due to the manpower limitations of the IPS and the physical conditions, meetings are sporadic. As a result, visits in the detention facilities are delayed or canceled due to logistical issues, oftentimes without any prior notice, when HRM representatives are waiting outside the gates of the facility. This is of particular concern when it comes to the remote Saharonim facility. In addition, this format of visits makes the work of the IPS staff harder and significantly reduces the ability of HRM to meet the detainees and assist them. If in visits prior to 2008, HRM representatives could meet, on average, about 250 detainees per wing and document their requests and problems, and could often visit two wings during one visit, since the limitations placed by the IPS, HRM can usually meet no more than ten detainees per visit.

³⁰ HCJ 6180/12 *HRM vs. the IPS et al.*

Detention of Victims of Trafficking for Sex Work

Upon its establishment in the late 1990s, HRM became one of the first organizations to campaign against the phenomenon of human trafficking for the purpose of sex work, after HRM identified such trafficking victims during their visits in prison. The collapse of governance and welfare systems in the former Soviet Union produced economic and social hardship. At the same time, poor enforcement in Israel created a fertile ground for human traffickers. They smuggled in women from the former Soviet Union with tourist visas, with fake identities of new Jewish immigrants, and even smuggled them through the border with Egypt.

This phenomenon did not concern Israeli authorities at the time: the women were perceived as criminals, illegal residents who should be arrested and deported from Israel. They were not regarded as victims of one of the gravest violations of human rights. At the time, there was no specific legislation prohibiting human trafficking, there was almost no enforcement, and very few police investigations were opened. The detained women were deported, and courts regarded trafficking in women as a relatively light offense compared to other charges pimps faced. In cases where traffickers and pimps were charged, this ended in plea bargains and light sentences. Only in 2000 did the Knesset pass the 56th amendment to Israel's Penal Code, codifying trafficking of persons for the purpose of sex work as a crime. In 2006, following intensive advocacy work of HRM and Kav LaOved, the Knesset passed the Law Prohibiting Human Trafficking. The new law expanded the definition of human trafficking, including not only trafficking for the purpose of sex work, but also trafficking for other purposes, such as forced labor, organ trade and more. In addition, the law increased the penalties on already existing offenses.

During those years, most of the women who fell victim to human trafficking were arrested during police raids on brothels. After their arrest, they were issued a deportation order for illegal residency in Israel and taken to a detention facility of the Israeli Police. From there they were transferred to the Neve Tirza Prison. In 2000, migrant women who were arrested in brothels and deported were held in police stations and detention centers for eight days on average before being

moved to Neve Tirza Prison. According to the regulation set forth in HCJ *Sasai*,³¹ which was codified into law in 2001 with the 9th Amendment to the Entry to Israel Law, every detainee must be brought for judicial review as soon as possible, and no later than 14 days of the arrest. This judicial review is to examine whether the conditions of the deportation order should be changed and the possible release of the detainee on bail. This regulation was violated in a systematic and frequent manner, especially in Kishon Prison. In 2000, 35% of the women were detained for over eight days without being brought before a judicial review instance, and 14% were held for over 14 days, without their detention being examined by judicial review.³² Because the travel documents of most women were forged or held by their traffickers, holding them in detention prolonged the process of obtaining new traveling documents, since this process only commenced when they reached the Neve Tirza facility, thus extending their overall time in detention.

At the Neve Tirza facility, women waited for 21 more days on average until their deportation. The main reason for this delay was the inability of the various consulates to speedily verify the identity and nationality of the women and issue them travel documents. As a result, in 2000, women were held on average for 30 days in police stations and immigration detention facilities from the moment of their arrest until their deportation. During this time, the women's rights were violated. For example, they were oftentimes detained alongside women suspected or convicted of criminal offenses. Only in 2001 did the 9th Amendment to the Entry to Israel Law codify the obligation to separate detainees slated for deportation from prisoners held on criminal charges.

According to information collected by HRM in 2000, only 12 of the 392 migrant women in sex work, some of them victims of human trafficking who were arrested and deported, agreed to testify against their pimps before the deportation. There are a number of reasons why only a small number agreed to testify: first, trafficking victims had no incentive to testify against their traffickers, since providing evidence did not lead to their release from detention, did not prevent their deportation, and did not guarantee their protection from harassment or harm as a result of providing the testimony. Until July 2000, the Prosecutor's Office used to demand the detention of these witnesses who were deported immediately after giving their testimony. These detention periods lasted between several weeks to several months. Thus,

³¹ HCJ 4963/98 *Hasan Sasai et al. vs. the Minister of Interior*.

³² See: HRM, *Trafficking in Women in Israel*, December 2001, Available in Hebrew: <http://bit.ly/34Jemew>.

for example, the Prosecutor's Office requested the detention of victims in a human trafficking case – supposedly to guarantee their safety – remarking that "the detention order is, as far as the women are concerned, is also a protective order, because of the involvement of the Russian mafia in the case. These girls identified the accused. This, combined with actions in the case will result in their murder the moment they step out. Therefore, we see no alternative other than keeping them in detention." It goes without saying that such requests for a supposed "protective detention" are never filed when it comes to witnesses who hold Israeli citizenship. In addition, during the hearing, the representative of the Prosecutor's Office admitted that the prosecution is concerned solely with ensuring the testimony of the victims and not their protection: "The request is not made for a protective purpose. If someone harms them – it would prevent them from testifying."³³

Starting 2011, the Prosecutor's Office ceased filing such detention requests following several petitions filed by HRM,³⁴ and women who testified against their traffickers were released from detention. The Police bore the cost of their living expenses during the proceedings, and regulations were put in place to house the women. In 2004, in line with a governmental decision, the Maagan Shelter was established.³⁵ The shelter provided women who were recognized as human trafficking victims with housing, job placement, mental health assistance and medical care.³⁶ Starting in 2006, the Police and Immigration Administration no longer arrested the victims, but immediately transferred them to the shelter for a rest period, during which they are informed of their rights and can decide whether they wish to testify against their traffickers.

In 2000, HRM volunteers who visited Neve Tirza Prison met V.M., a human trafficking victim from Moldova who was passed around between six traffickers and was forced into sex work. V.M. was the first trafficking victim we represented and the lawsuits and petitions we filed on her behalf set a landmark precedent: for the first time, the State was asked to open an investigation against traffickers, to release a trafficking

³³ Ibid.

³⁴ HCJ 967/01 *V.M. vs. the Minister of Internal Security*; HCJ 3536/01 *Jane Doe vs. the Israel Police et al.*

³⁵ Decision 2806 of the 29th government, *Establishing A Shelter For Victims Of Human Trafficking For The Purposes Of Sex Work*, dated December 1, 2002.

³⁶ See also: Dr. Dafna Haker and Dr. Orna Cohen: *Research Report – The Shelters in Israel of Female and Male Survivors of Human Trafficking*, Tel Aviv University, March 2012. Available in Hebrew: <http://bit.ly/2QZ4EAL>.

victim from detention, to grant the victim a visa and a work permit, to cover her living expenses while awaiting testimony, and to waive the court fees when filing a tort claim.³⁷ This was also the first civil lawsuit for damages filed against human traffickers in Israel.³⁸ The outcomes of the cases were precedent-setting: the police investigated the crimes and filed charges against the pimps, the traffickers and a policeman who cooperated with them. The State financed V.M.'s expenses during the proceedings while she waited to give her testimony; the Detention Review Tribunal released V.M. from detention and she received a visa; and in July 2005, the Labor Tribunal ruled that her traffickers must pay her a compensation totaling over NIS 250,000 (over \$54,000 in the 2005 conversion rate). These legal proceedings paved the way for a significant shift in how Israeli authorities treat the phenomenon of human trafficking in general and how they treat women victims of trafficking in particular.

In a petition filed to the HCJ in 2001, which HRM joined as *amicus curiae*,³⁹ we raised the concern about the conflict of interests of lawyers representing the trafficking victims while working on behalf of their traffickers. The president of the Supreme Court at the time, Justice Aharon Barak, accepted our argument. The ruling led to an amendment of legislation, determining that human trafficking victims are entitled to legal representation provided by the State.⁴⁰ We provided advice and guidance to attorneys of the Legal Aid Department at the Ministry of Justice who represent the victims, and our cooperation with them continues to this day.

However, alongside these legal proceedings, in the early 2000s, the Immigration Administration still charged victims of human trafficking with offences that were an integral part of the crime committed against them – illegal re-entry and infiltration:⁴¹

Criminal Case 3959/03 *The State of Israel vs. S.G.*

The defendant, a citizen of the Ukraine, was a victim of human trafficking for sex work. She was arrested in December 2002 and was transferred to Michal Detention Facility. Upon her arrest, her traffickers informed her that she didn't

³⁷ Footnote 34, HCJ 967/01.

³⁸ Labor Tribunal case (Beer Sheva) 4634/04 *V.M. vs. Yuri Serselevsky et al.*

³⁹ HCJ 1119/01 *Jane Doe vs. the Minister of Interior.*

⁴⁰ 3rd Amendment to the Law on Legal Aid, 2003.

⁴¹ More on the Immigration Administration and its authorities, see footnote 15, *Immigration Administration or Expulsion Unit?*

work long enough to cover her "debt" to them, and she would have to return to Israel to repay this debt. Therefore, she returned to Israel in September 2002, to a brothel in Acre. When she was arrested the second time, the police informed her that she was suspected of infiltration: "By infiltrating the State of Israel through the Israel-Egypt border, you illegally worked and stayed in the country." The charges against her included the offenses of infiltration and illegal residency in Israel. The court handed a partly suspended sentence of 18 months, three of them to be served in prison.

Criminal Case 3316/05 *The State of Israel vs. A.P. and M.L.*

A.P. and M.L., both Ukrainian citizens, were brought to Israel via Egypt in June 2005. They were interrogated by the Immigration Authority and admitted that they were deported from Israel several times before: A.P. was deported twice and M.L. three times. There were indications that both had engaged in sex work. In 2005, they were charged at the Beer Sheva Magistrate's Court under the Anti-Infiltration Law and Entry to Israel Law. The prosecution asked for their detention pending judicial proceedings, arguing that their actions are indicative of the great threat they pose to public safety and national security. When the court agreed to consider the possibility of placing the women in a shelter for trafficking victims instead of keeping them in detention, the Israeli Police did everything in its power to prevent this alternative, without even investigating whether the "defendants" are indeed human trafficking victims. Throughout this period, the women were only interrogated by representatives of the Immigration Administration. Eventually, they were deported after several months in detention.

Despite the far-reaching changes concerning human trafficking for the purpose of sex work and the treatment of trafficking victims, the phenomenon has not been eliminated and its patterns constantly shift: when authorities find solutions for dealing with the tactics used by the traffickers, the criminals alter their patterns to avoid detection. Thus, over the years, HRM identified apparent victims of human trafficking and forced labor during their visits to detention facilities, and by reviewing protocols of the Detention Review Tribunals. HRM referred these cases to the Israeli Police. In other cases, it was the Tribunal itself that forwarded such cases to the police. This shows the great importance of HRM's presence in detention facilities, to identify and assist victims of human trafficking, both to release them from detention, and to identify the shifting patterns of this crime and help develop policies and strategies to address them.

Detention of Minors

Although Israel is a signatory of the Convention on the Rights of the Child,⁴² the legislation concerning undocumented migrants does not distinguish between minors and adults. When HRM first found minors in immigration detention facilities almost two decades ago, authorities treated them like any other detainee slated for deportation. In cases when their deportation was not possible – for example, due to the temporary group protection policy applied toward asylum seekers from Sudan and Eritrea, and formerly applied to asylum seekers from other African countries – these minors remained in detention for long periods of time.

In 2003, HRM initiated a hearing at the Knesset Committee on Foreign Workers, which deliberated on the issue of detaining minors alongside adults, in violation of IPS regulations. Following the hearing on this matter in the Committee, the policy was changed and minors were held separately from adults.

Detention of Unaccompanied Minors

Until 2007, HRM was the only organization on the ground that provided assistance to the unaccompanied minors who reached Israel, most of them asylum seekers from African countries. In the early 2000s, these minors arrived mostly from countries such as Guinea, Ghana and Nigeria. Some arrived due to persecution in their country of origin. Some were victims of human trafficking. Starting in 2006, unaccompanied minors began arriving from Sudan and later from Eritrea as well. Unlike minors who arrived in Israel with parents or relatives, these minors arrived on their own, without an adult to ensure their safety and welfare. In cooperation with ACRI, HRM filed petitions demanding the release of these minors from detention. To ensure their release, HRM searched for alternatives to detention in educational and communal settings, as well as foster families. Because authorities did not acknowledge their responsibility to ensure the welfare of the minors, all those who welcomed the minors did so on a voluntary basis, without compensation or support from the State.

Petitions filed by HRM to the Haifa District Court in 2006, on behalf of two detainees,

⁴² Convention on the Rights of the Child: <http://bit.ly/2EpnM3h>.

a 14-year-old and a 15-year old, led to their release in 2007 and to a decision to grant *pro bono* legal representation to all unaccompanied minors in detention, provided by the Legal Aid Department at the Ministry of Justice.⁴³ These decisions led to a speedier release of minors. In March 2008, the State promulgated a procedure of unaccompanied minors in detention, but minors continued to be held for long durations, at times lasting more than a year.⁴⁴

During those years, HRM and ACRI worked to prevent the detention of minors, to shorten its duration, and to improve the conditions in detention through intensive lobbying vis-à-vis the Knesset Special Committee on the Rights of the Child, first chaired by Nadia Hilou and Shelly Yechimovich and later headed by Zevulun Orlev, Danny Danon and Orly Levy-Abekasis. Following this lobbying, MKs Danny Danon, Nitzan Horowitz and Dov Khenin initiated a legislative proposal, "Protection of Teens in Detention" in July 2009, which was designed to prevent the detention of migrant children and unaccompanied minors, a law proposal they have failed to advance.⁴⁵

During MK Danny Danon's term as head of the Committee on the Rights of the Child, human rights NGOs managed to initiate several Committee hearings. These hearings resulted in improvements of detention conditions and reduction in duration of detention of minors. For example, at the end of a hearing held by the Committee on May 2010, MK Danon issued a press release titled "MK Danon: the children of refugees are held in abominable conditions. The place of children is not in prison." The committee chairman concluded his statement by demanding "the Ministry of Justice to submit, by July 1, 2010, the regulation being developed on handling unaccompanied children. If the regulation is not filed before the deadline, the Committee will advance the bill Protection of the Rights of Minors in Immigration Detention (legal amendments), 2009, by MK Horowitz, Danon and Khenin, which will altogether prohibit the detention of unaccompanied minors." Eventually, the new regulation was promulgated only in July 2011, and does not guarantee that

⁴³ See: The Legal Aid Department, *The Representation of Minors from Africa in Detention: The Implementation of the Constitutional Rights to Legal Representation*, July 22, 2011. Available in Hebrew: <http://bit.ly/34v8VPV>. See also chapter 8: Landmark Proceedings against the Detention of Refugees and Migrants.

⁴⁴ *The Regulation on Handling Unaccompanied Minors*, last updated on July 1, 2011. Available in Hebrew: <http://bit.ly/2R6kfyg>.

⁴⁵ Law proposal the Rights of Minors in Immigration Detention (legal amendments), 2009.



unaccompanied minors released from detention

unaccompanied minors will not be held in immigration detention.⁴⁶

In early 2010, the Legal Aid Department filed a petition to the HCJ on behalf of 24 unaccompanied minors against their detention.⁴⁷ The petition argued that although the Entry to Israel Law appears to allow the detention of minors, due to the severe consequences of detention conditions, unaccompanied minors should not be held in immigration detention. After conducting a hearing on the petition, the HCJ found that it had become superfluous and rejected the petition, due to the significant changes, according to the HCJ, in the detention conditions of the minors, and particularly, the establishment of a specialized detention facility for minors, Matan, and placement of some of the minors in boarding schools as an alternative to detention.

The Matan detention facility for minors was established in Hadera in August 2010. The facility included 90 beds for detainees aged 13-18 in rooms with five bunk-beds. Although the facility failed to provide for all the needs of the minors, its establishment attested to the authorities' recognition that this is a uniquely vulnerable population. Despite this, because the facility was often filled to capacity, the State continued holding unaccompanied minors in Saharonim near the border with Egypt, or in Givon near Ramle, where the minors were usually held in the same wing as adult detainees. In August 2012, the facility was temporarily shut down after an escape of several of the minors. All 50 of the detainees in the facility at the time were temporarily moved to Givon.⁴⁸

An additional improvement of the authorities' treatment of unaccompanied minors took place with the passing of the 3rd amendment to the Anti-Infiltration Law in 2012. The law allowed for the release of asylum seekers only in extraordinary situations but promulgated that unaccompanied minors would be released to appropriate alternatives to detention.

Since 2013, following the erection of the border fence along the border with Egypt, no additional asylum-seeking unaccompanied minors entered Israel, except two female minors who entered in January 2014 for which HRM secured their release. All the minors were gradually released from the Matan Facility, which was eventually

⁴⁶ See footnote 44, *the Regulation on Handling Unaccompanied Minors*.

⁴⁷ HCJ 1254/10 *John Doe vs. PIBA et al.*

⁴⁸ Gili Cohen, *Despite the HCJ's Stance: 50 African Teens Were Moved to Givon*, Haaretz, August 9, 2012. <http://bit.ly/2NzBlB8>.

closed in August 2013.

From 2014, no children of asylum seekers and unaccompanied minors were held in detention, and the 4th and 5th amendments to the Anti-Infiltration law excluded minors from detention in the Holot facility.

In addition to the main problem of detaining minors, another problem HRM detected was faulty age testing procedures. Problems included: screenings conducted in an ad hoc, unsystematic manner; age determination processes conducted by people untrained in child-sensitive techniques; age determination methods that rely on outdated medical practices, such as bone density measurement; and children treated as adults until the age determination is made.

Following petitions submitted by HRM in 2006,⁴⁹ the State changed the medical examinations used to determine the age of minors to ensure their reliability. In June 2007, the Immigration Authority and Ministry of Health promulgated a new regulation concerning tests to assess the ages of unaccompanied minors.

Detention of Migrant Families with Children

Over the years, Israeli authorities threatened several times to arrest and deport migrants who came to work in Israel, established families and had children. These children grew up in Israel, attended Israeli schools, and integrated into Israeli society. Most of these children are not familiar with their parents' countries of origins.

In 2003 and 2004, authorities conducted two "voluntary departure" campaigns, following which they threatened to arrest and deport those who do not leave Israel on their own. These threats led to a large-scale popular mobilization in Israel on behalf of these families, which led to a one-time decision of the Israeli government in 2005 to grant legal status to undocumented children on humanitarian grounds,⁵⁰ and to a significantly expanded version of this decision in 2006.⁵¹ However, families who did not meet the criteria set by this decision for obtaining legal status and who

⁴⁹ See for example Administrative Appeal (Haifa) 326/06 *John Doe vs. the Ministry of Interior et al.*; Administrative Appeal 379/06 (Haifa) 379/06 *John Doe et al. vs. the Ministry of Interior et al.*

⁵⁰ Prime Minister's office, decision no. 3807, *Temporary Provisions Granting Legal Status to Children of Undocumented Migrants, Their Parents and Siblings Living in Israel*, June 26, 2005. Available in Hebrew: <http://bit.ly/2Pq8Erh>.

⁵¹ Prime Minister's office, decision no. 156, *Temporary Provisions Granting Legal Status to Children of Undocumented Migrants, Their Parents and Siblings Living in Israel*, June 18, 2006. <http://bit.ly/37VUre4>



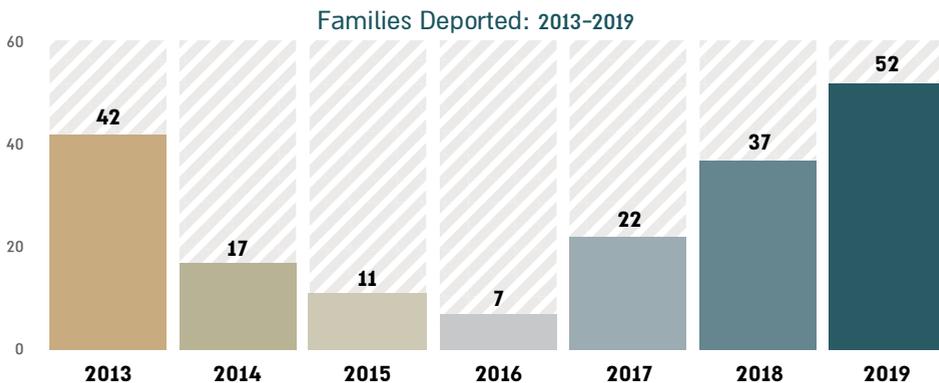
A family arrested by immigration agents. Photo: Activestills

did not regularize their status, were not deported in the following years. In July 2009 PIBA was established and its head at the time, Yaakov Ganot, made statements about its intention to commence arrests and deportation of migrants, along with their children. This resulted in a second large-scale popular mobilization, which gave rise to yet another one-time, humanitarian government decision to grant legal status to migrant children.⁵²

In March 2011, PIBA inaugurated cells for families in the Yahalom Detention Facility at Ben Gurion Airport and began arresting and deporting families with babies and pre-school children. Following criticism of the harsh detention conditions at the Yahalom Facility, PIBA began detaining families with children in the women’s wing in Givon.

According to data provided by the Immigration Authority, in 2016, eight minors were jailed in the Yahalom Facility, 25 in 2017 and 49 in 2018. PIBA did not provide data regarding the detention of children in Givon, despite an FOI request, so it is impossible to determine how many migrant children were arrested and deported from Israel based on the data available.

In September 2019, PIBA provided data indicating an increase in the number of minors detained prior to their deportation in recent years. However, the figures do not provide accurate numbers of minors in detention as they relate only to the number of families deported from the country:⁵³



⁵² Prime Minister’s office, decision no. 2018, *Temporary Provisions Granting Legal Status to Children of Undocumented Migrants*, August 1, 2010. <http://bit.ly/2DB88kF>.

⁵³ The data was provided as part of the State’s response dated September 15, 2019, in Administrative Appeal 27147-09-19 *De La Vega vs. PIBA*.

Article 18(H)(E) of the Entry to Israel Law determines that the Minister of Internal Security, with the approval of the Minister of Interior, may set guidelines regarding the detention conditions of families and minors. Despite this, no regulations have been issued, and the Entry to Israel Law does not stipulate different standards for the detention of minors. In the meantime, the detention of minors continues to be a standard procedure: although children of asylum seekers are no longer held in detention since 2013, children of undocumented migrants are detained with their parents, at times for long durations, when the parents refuse to return to their countries of origin, or when the deportation is delayed due to lack of travel documents as well as other circumstances.

In July 2018, the detention of undocumented children was discussed in a hearing at the Knesset Committee on the Rights of the Child,⁵⁴ during which the Commissioner on Human Rights at the Ministry of Justice, Adv. Hila Tena-Gilad, reported that a meeting at the Ministry of Justice, with representatives from all the relevant ministries, was scheduled to take place in August 2018 to find solutions to this issue. To our knowledge, this meeting did not take place.

During the Knesset hearing, HRM reiterated that, even without changes to the law, the Minister of Interior and the competent enforcement organs have the discretion to prevent the detention of minors, preferring alternatives to detention in relevant cases.

In October 2019, after Adv. Yehudit Karp, the former Deputy Attorney General, addressed the Attorney General on the matter, and following a series of legal proceedings against the detention of families with school children, a meeting was held at the Ministry of Justice for the first time. The meeting resulted in guidelines that may be considered a first step in developing regulations for the detention of minors. In their current form, however, these guidelines will not prevent the detention and deportation of minors. But they make it clear that "as a rule, custody of minors is the last measure that can be taken to ensure their departure from Israel, and should only be used when it is highly probable that other means of securing their departure [...] will not be effective."⁵⁵

⁵⁴ Hearing on the Detention of Undocumented Mothers and Their Minor Children, the Special Committee on the Rights of the Child, July 10, 2018. Available in Hebrew: <https://bit.ly/2DFcYNI>.

⁵⁵ See the response of Dr. Omri Ben Zvi from the Advisory and Legislative Division at the Ministry of Justice, from Oct 10, 2019: <http://bit.ly/legalnohal> and from Dec 3, 2019: <https://bit.ly/2DXs1CJ> (Hebrew).

While immigration policies are always a complex issue, prone to controversy, there is a near-consensus that the rights of children should be protected, regardless of their legal status even in countries that have strict immigration policies. Different countries adopt solutions that serve as alternatives to the detention of minors: assigning a case worker who can facilitate departure, alternatives to detention in communal settings accompanied by a case worker, specialized family residency centers, and boarding schools for unaccompanied minors.⁵⁶

In its 2018 ranking on the detention of migrant children, the International Detention Coalition (IDC) reviewed the policies of 20 countries where a committee was formed to provide reliable information to the IDC. Israel was ranked in the low position of 15th place, as it continues to detain children of undocumented migrants.⁵⁷

In 2012, the former State Comptroller, Yossef Shapira, found that "PIBA needs to conduct a real and extensive examination concerning the possibility to implement any one of the proposed alternatives, creating a pool of alternatives which should be considered according to the circumstances. Only in cases where none of the alternatives is suitable, can detention be considered as a last resort. Such a mode of operation is intended to ensure that the detention of minors is carried out, as much as possible, in the spirit of the Convention on the Rights of the Child."⁵⁸

The detention of children should always be used only as a last resort. In such cases, the duration of detention should be limited and conditions in the detention facilities should be adapted to meet the needs of minors. Before opting for this last resort, alternatives to detention should be given priority when it comes to undocumented children.

⁵⁶ For more information, see: HRM, PHRI, the Israeli Children Project at ACRI, and the UNHCR, *Alternatives to Detention of Migrant Children in Israel*, January 2014. Available in Hebrew: <https://bit.ly/2GGLvqg>.

⁵⁷ Lee Yaron, *Israel Ranked 5th From Worst of 20 Countries on Detention of Migrants' Children*, Haaretz, August 14, 2018. <http://bit.ly/2MahV6d>.

⁵⁸ State Comptroller, report 63C for 2012, *The Handling of Undocumented Minors in Israel*, May 2013. Available in Hebrew: <https://bit.ly/2DxlnkW>.

Asylum Seekers and the Anti-Infiltration Law

Until 2005, African asylum seekers who crossed the border into Israel were picked up by IDF soldiers and held in detention under the Entry to Israel Law. HRM and the Refugee Rights Clinic at the Tel Aviv University worked to ensure the release of these asylum seekers. The Detention Review Tribunal released several dozen of them to detention alternatives in kibbutzim. Authorities therefore sought a way to maintain asylum seekers in detention for prolonged periods, making it difficult to release them. In 2006, the first Sudanese survivors of the massacre of peaceful protesters by Egyptian regime forces in Mustafa Mahmoud Garden in Cairo began arriving in Israel. The Immigration Authority began issuing deportation orders against these individuals under the Anti-Infiltration Law, enacted in 1954 to prevent border crossing from neighboring Arab countries and the return of Palestinian refugees. HRM and the Refugee Rights Clinic petitioned against the use of the Anti-Infiltration Law to detain asylum seekers. The proceedings resulted in the decision to bring those who were arrested under the Anti-Infiltration Law before the Detention Review Tribunal within 14 days of their arrest, and to apply the provisions of the Entry to Israel Law on them.⁵⁹

In 2006, Adv. Elad Azar, a Detention Review Tribunal adjudicator, was appointed as a special advisor to the Minister of Defense, tasked to review the cases of the detainees and recommend whether to release them or not. The special advisor did not review the case of the detainees in Ktziot, where about 120 asylum seekers from Sudan were held, due to a budgetary disagreement between the Ministry of Justice and Ministry of Defense concerning his travel expenses. As a result, a growing number of asylum seekers remained in detention, without any judicial review. Only after four months and multiple appeals by HRM and the Refugee Rights Clinic did the special advisor begin to work in Ktziot Prison and started releasing detainees to detention alternatives in kibbutzim and moshavim (agricultural communities). In March 2007, after HRM presented testimonies to the special advisor concerning the inhumane and illegal living conditions of many asylum seekers in these agricultural

⁵⁹ Administrative Appeal (Tel Aviv) 162/06 *Ministry of Interior vs. Tijian*.



Tents in Saharonim. Photo: Activestills

communities, where they were obliged to remain as part of their release conditions, the advisor began releasing asylum seekers without requiring an alternative placement.

In September 2007, upon the establishment of Saharonim, a wing made up of RVs was established for female detainees. Until then, refugee women and their children were released upon entry to Israel. The media was invited to the location to observe the good living conditions. However, a few months later, the trailer park section was converted to serve the administrative staff of the prison, while the women and children were transferred to one of the eight tent wings where asylum seekers were held in Saharonim at the time. Each of the wings could hold up to 250 detainees in large tarp tents.⁶⁰

The growing number of asylum seekers entering Israel and held in Saharonim created an overload and asylum seekers were often detained without being properly registered in the computerized system. Even when the detainees were properly registered, authorities often struggled to comply with the law requiring them to bring the detainees before a Tribunal adjudicator within 72 hours of their arrest. For the most part, the Tribunal ignored this violation or reprimanded PIBA for it. However, in October 2010, after PIBA kept violating the law, the Tribunal decided to immediately and unconditionally release 81 detainees who were brought for review after a significant delay; all HRM had to mention in the requests it submitted on their behalf were the addresses where they would stay after their release.

This mass release exposed the fact that not all detainees were known to the system. For example, PIBA refused to release a six-year-old who was detained with her mother, since she did not appear in the system at all. In early November 2011, when 11 families, survivors of the Darfur genocide, were supposed to be released from Saharonim following a government decision in September of that year to grant humanitarian temporary residency status to 498 Darfuri survivors living in Israel at that time, only 10 families could be located. The 11th family, a mother and her two children, aged four and six, were not documented at all in the computerized records. It took two more months, during which HRM met the family on a weekly basis in Saharonim, until the authorities agreed to register them and to allow for

⁶⁰ On the conditions of detention during those years, see also: Rahel Gebretsadok, *The Release of Women and Children from Saharonim*, in *Twenty Years of Changing Reality*, HRM, 2019: <http://bit.ly/2QzXFMp>; See also Sigal Rozen, *There are No Butterflies in Saharonim*, Matah, October 1, 2010. Available in Hebrew: <http://bit.ly/33DlFD0>.

their release.⁶¹

In 2008–2012, due to the growing number of asylum seekers entering Israel each month, men, women and children were held in the tents of Saharonim for increasingly shorter durations and were released to make room for the asylum seekers entering after them. In 2011, when the rate of asylum seekers entering Israel was at its highest, the detainees were held in prison for a week or two prior to their release.

In early 2012, the Knesset passed the 3rd amendment to the Anti-Infiltration Law,⁶² whose stated goal was to deter foreigners from arriving in Israel.⁶³ The law is applied to those who entered Israel outside an official border crossing and without a visa. Some Detention Review Tribunal adjudicators were also authorized to act as adjudicators of newly founded "Detention Review Tribunals of Infiltrators" under the law. Although the same adjudicators served on both tribunals, they operated under two different hats in two different tribunals, whose authority vary.

When acting in accordance with the 3rd amendment to the Anti-Infiltration Law, the Detention Review Tribunal carried out the first judicial review of detention only after 14 days from the moment of the arrest (as opposed to 96 hours under the Entry to Israel Law); they carried out routine review hearings every 60 days (and not every 30); and release from detention was possible only after three years (and not after 60 days). In addition, the Anti-Infiltration Law set extremely narrow grounds for release, and only in extraordinary circumstances. The routine review that the Tribunal carried out under the Anti-Infiltration Law largely seemed pointless, since the Tribunal had extremely limited authority to order releases, and indeed, almost no asylum seekers were released during the time the law was in effect.

Human rights organizations filed a petition to the HCJ, arguing that the law contravenes the Basic Law: Human Liberty and Dignity and is therefore unconstitutional.⁶⁴ 18 months later, during which thousands of people were detained under the law, their

⁶¹ For additional details, see on the website of ACRI, *Detention of Asylum Seekers – the Activities of the Hotline for Migrant Workers*, June 4, 2008. Available in Hebrew: <http://bit.ly/2qcYe5U>.

⁶² The Anti Infiltration Law (Offenses and Judgment) (Amendment no. 3 and Temporary Order), 2012.

⁶³ Protocol of the Knesset plenum from January 9, 2012.

⁶⁴ See more information below in chapter 8: Landmark Proceedings against the Detention of Refugees and Migrants .



Near Holot. Photo: Malin Fezehai

cases being reviewed and approved again and again by the Tribunal, the High Court of Justice ruled, in an expanded panel of nine judges, that the amendment to the Anti-Infiltration Law is unconstitutional. In the 120-page decision, issued on September 16, 2013, the judges ruled that the law, which allowed for a detention duration of at least three years for people who cannot be deported from Israel, disproportionately harms their right to liberty. The Court ordered the State to immediately examine the cases of the 2,000 detainees held under the law, and consider releasing them, as per the Entry to Israel Law.

As a result, the State passed the 4th amendment to the Anti-Infiltration Law, which was approved by the Knesset on International Human Rights Day, December 10, 2013.⁶⁵ This law was intended to bypass the HCJ ruling from September of that year, which abrogated the 3rd amendment to the Anti-Infiltration Law. The HCJ ruling gave the State 90 days to release the asylum seekers detained in Saharonim at the time.⁶⁶ Instead, the State moved to hurriedly pass a law to prevent the release of the detainees. On December 12, under the 4th amendment of the Anti-Infiltration Law, about 500 detainees were moved in the middle of the night, during a storm, to the recently opened Holot facility across the road from Saharonim Prison, in the middle of the Negev desert. The 4th amendment stipulated a one-year period of detention in Saharonim followed by open-ended detention at Holot.

On December 15, 2013, human rights organizations filed another petition against the Anti-Infiltration Law and the use of the Holot facility,⁶⁷ which was a detention facility despite the State's insistence that it is an "Open Residency Center." The facility was surrounded by two high fences, run by the IPS, and all aspects of the detainees' daily lives were controlled by the prison guards or PIBA officials. The detainees at Holot were free to exit the facility's gates during certain hours of the day, but they had to show up for three daily roll calls, and therefore could not go far from the facility. The HCJ voided the law on September 22, 2014, and ordered the State to shut down the Holot facility within 90 days.⁶⁸ Instead, the State passed a new

⁶⁵ The Anti-Infiltration Law (Offences and Judgment) (Amendment no. 4 and Temporary Order), 2013.

⁶⁶ HCJ 7146/12 *Adam vs. the Knesset* (ruling issued on September 16, 2013). Available in Hebrew: <http://bit.ly/34NmpWL>.

⁶⁷ HCJ 8425/13 *Gabrieslasi vs. the Knesset*. Available in Hebrew: <https://bit.ly/2TToWdu>.

⁶⁸ HCJ7385/13 *Eitan vs. the Government of Israel* (ruling issued on September 22, 2014). Available in Hebrew: <http://bit.ly/371KGKf>.

amendment to the Anti-Infiltration Law a few hours before the Knesset dissolved on December 8, which came into effect on December 17, 2014, allowing the State to continue holding the detainees in Holot.⁶⁹ This time, the State limited the duration of detention in the Holot facility to 20 months. Again, human rights organizations filed a petition against the law, a third one. The HCJ partially accepted the petition, limiting the duration of detention to a maximal period of 12 months.⁷⁰ The Anti-Infiltration Law was amended once again in February 2016, setting the maximal time in the facility to 12 months, until the facility was shut down.⁷¹

On March 14, 2018, the Holot facility was closed down and the 264 asylum seekers confined within its fences, including survivors of torture, were transferred to Saharonim Prison due to their refusal to be deported to third countries (see more below).⁷² Hundreds of other asylum seekers who were held in Holot and did not receive a deportation order to third countries were released by PIBA without any prior notice.⁷³

Throughout its four years of operation, over 13,000 asylum seekers were held in Holot.⁷⁴ Almost all asylum seekers in Israel received summonses to Holot, whether they met the criteria promulgated by PIBA or not. The cost for Israeli taxpayers exceeded 1.25 billion NIS (\$360 million).⁷⁵ The facility kept Israel's legal system busy: in addition to the two petitions filed to the HCJ in the hope of shutting it down,

⁶⁹ The Law for Preventing Infiltration and Ensuring the Exit of Infiltrators from Israel (Legislation Amendments and Temporary Order), 2014. Available in Hebrew: <https://bit.ly/2XtxMm>.

⁷⁰ HCJ 8665/14 *Desta vs. the Knesset* (ruling issued on August 11, 2015). Available in Hebrew: <http://bit.ly/34Po8Li>.

⁷¹ The Anti-Infiltration Law (Offences and Judgment) (Temporary Order), 2016. Available in Hebrew: <https://bit.ly/2lcVSvP>.

⁷² See also the State's response dated April 24, 2018 in HCJ 2445/18 *HRM et al. vs. the Prime Minister*.

⁷³ Yarden Zur, *Last Asylum Seekers Released From Holot Detention Center as Mass Deportation Campaign Moves Ahead*, Haaretz, March 14, 2018: <http://bit.ly/2Q0UTzK>.

⁷⁴ Amir Alon, *The Holot Facility Was Closed: "An End to the Cruel Policy,"* Ynet, March 14, 2018. Available in Hebrew: <https://bit.ly/2FU1TLJ>.

⁷⁵ According to a response to a FOI Request filed by the Freedom of Information Movement, the cost of establishing the facility was NIS 323 million (\$93.2 million) <https://bit.ly/2SrgvEI>. According to the Ministry of Internal Security, the operation costs of the facility stood at NIS 240 million annually (\$69.2 million). See: Moran Azulay, Amir Alon and Yishai Porat, *The Government Approval, the Holot Facility to be Shut Down within 4 Months*, Ynet, November 19, 2017. Available in Hebrew: <https://bit.ly/2ErA7o7>.

six additional petition were filed to improve detention conditions in the facility,⁷⁶ and countless asylum seekers filed appeals against the decision to send them to Holot. During its period of operation, HRM carried out over 100 visits to the facility and documented detention conditions for the purpose of filing the petitions and assisting the detainees.⁷⁷

Use of Exceptions to the Entry to Israel Law to Allow Prolonged Detention of Asylum Seekers

As mentioned, the State relied on the Anti-Infiltration Law to detain asylum seekers for prolonged periods between the years 2006–2018, and particularly since late 2012. In addition, the State continued to use the two exceptions for release codified in article 13(6)(B) of the Entry to Israel Law, to allow for open-ended detention of asylum seekers: detaining those who do not cooperate with their deportation, and detention of those who pose a threat to the national security, public peace or public health.

Detention of Asylum Seekers Due to Their Refusal to Leave for Third Countries

Beginning in 2013, the Israeli government began promoting a plan to deport Sudanese and Eritrean asylum seekers to “third” countries in Africa,⁷⁸ which are not their countries of origin. This solution came about because the Israeli government cannot deport the asylum seekers to their countries of origin due to the situation there and the threat to their lives and liberty if returned.

In early 2015, the State announced that it would begin implementing the plan of forced deportations to third countries, starting with detainees in the Holot facility. Those who refuse to depart would be moved to Saharonim and held there indefinitely. Israeli human rights organizations appealed against the decision (henceforth, “the

⁷⁶ See chapter 8 below and footnote 5, chapter 4.

⁷⁷ See HRM, *Detention of Migrants and Asylum Seekers in Israel: 2017 Annual Monitoring Report*, footnote 5; *2016 Annual Monitoring Report*: <http://bit.ly/36P97KD>; *2015 Annual Monitoring Report*: <http://bit.ly/2S6zOq9>; *Rwanda or Saharonim – Monitoring Report: Asylum Seekers at the Holot Facility*, July 2015: <http://bit.ly/34BuCof>; HRM and PHRI, *Managing the Despair – Monitoring report*, November 2014: <http://bit.ly/36O40KJ>; HRM, *From One Prison to Another: Holot Detention Facility*, June 2014: <http://bit.ly/2EwuCDZ>.

⁷⁸ The countries with whom Israel signed the still classified agreements are Uganda and Rwanda.



Between Holot and Saharonim. Photo: Activestills

case of Tsegeta,")⁷⁹ and the Court issued an injunction that prevented the detention of asylum seekers under the scheme, and effectively froze the implementation of the deportation plan announced by the State.⁸⁰

On August 28, 2017, a ruling was handed down in the case. The court found that while such deportations to a third country are not unlawful in principle, due to the declaration of the State according to which the agreement with the third country stipulates that no person will be deported without their consent, it is unlawful to detain a person merely for refusing deportation, or in order to coerce consent. The ruling effectively prevented the forcible deportation of asylum seekers.⁸¹

On November 20, 2017, the government proposed a new amendment to the Anti-Infiltration Law.⁸² In the forward explaining its intent, it stated that following the ruling on the matter of Tsegeta, the State "acted to amend the existing agreement with the third country [Rwanda] and now intends to bring about the departure of infiltrators to third countries in large numbers. Under these circumstances, and to the extent it will be possible to remove infiltrators directly from Israeli city centers to the third country, the necessity of the continued operation of the Holot Residency Center is to be examined at the end of a three-month period."

On January 18, 2018, PIBA began holding hearings for asylum seekers in Holot, ordering them to decide within 30 days whether they intend to leave to Uganda and Rwanda, under the threat of indefinite detention in Saharonim should they refuse.⁸³ Among the asylum seekers who received deportation orders were survivors of the Sinai torture camps, as became apparent in a survey conducted by HRM in the Holot facility a few days later.

On February 20, the first asylum seekers were transferred to Saharonim after refusing

⁷⁹ See Administrative Appeal 54836-04-15 *Hagos vs. the Minister of Interior*; Administrative Appeal 5126-07-15 *Tsegeta vs. the Minister of Interior*; Request for a Hearing 5164/15 *Tsegeta vs. The State of Israel*; Request to Appeal 5061/15 *Tsegeta vs. the Minister of Interior*; and Administrative Appeal 8101/15 *Tsegeta vs. the Minister of Interior*.

⁸⁰ Request to Appeal 5061/15 *Tsegeta vs. the Minister of Interior*.

⁸¹ Administrative Appeal 8101/15.

⁸² Bill proposal 1167 dated November 20, 2017. Available in Hebrew: <https://bit.ly/2TlIsIV>.

⁸³ Ilan Lior, "We Wish You Luck:" Asylum Seekers in Holot Were Ordered to Leave to Rwanda, Haaretz, January 1, 2018. Available in Hebrew: <http://bit.ly/2C6Uu8a>.

to leave Israel within the 30 days allotted to them.⁸⁴ In response, the remaining detainees in Holot launched a hunger strike in solidarity and protested in front of Saharonim.⁸⁵

Three petitions were filed against the deportation and detention plan.⁸⁶ Following the legal proceedings and popular pressure, which manifested in mass protests in Israel and in front of Rwandan embassies around the world, the State was forced to admit in court that the agreements do not meet the criteria stipulated by the verdict in the matter of Tsegeta, and eventually released the detainees. Of the 214 detainees held in Saharonim, almost all were released, except eight who continued to be held under the "Criminal Guidelines" (see below). Despite the abrogation of the forcible deportation plan and the release of most asylum seekers from detention, authorities continue to push asylum seekers to leave "willingly."⁸⁷ This is the ongoing silent deportation.⁸⁸

The Criminal Procedure

On September 24, 2012, PIBA issued regulation number 10.1.0010 entitled "The Procedure on Handling Infiltrators Implicated in Criminal Proceedings." The first version of the procedure, dated September 2012, was based on the Anti-Infiltration Law and stipulated that the police and IPS would send PIBA a request to transfer a person to immigration detention due to their involvement in criminal activity. The procedure was updated twice, on July 1, 2013 and on April 4, 2014.

The procedure led to a wave of arrests of asylum seekers suspected of "involvement in criminal activity." According to data presented by the Public Defender's Office, over 400 people were arrested and held under the Criminal Procedure at the time. The procedure allowed the police to detain asylum seekers, without the need to provide the required evidence, at times based solely on rumors or unfounded complaints. HRM handled the cases of many detainees held under the procedure,

⁸⁴ Ilan Lior, *Hundreds of Asylum Seekers Go on Hunger Strike as Israel Begins Jailing Those Refusing Deportation*, Haaretz, February 21, 2018. <http://bit.ly/2s2CZEz>.

⁸⁵ Ilan Lior, *About One Thousand Asylum Seekers Marched from Holot to Saharonim in Protest against the Deportation*, Haaretz, February 22, 2018. Available in Hebrew: <http://bit.ly/327t8JU>.

⁸⁶ HCJ 2445/18, HCJ 679/18 and HCJ 733/18. See more below in chapter 8.

⁸⁷ See: PIBA, Data on Foreigners in Israel. Available in Hebrew: <http://bit.ly/2C2XPFd>.

⁸⁸ More on deportation to "third" countries, see: HRM, the "Voluntary" Departure and Israel's Plan for Deportation to Third Countries, June 2018: <http://bit.ly/2S54Tuf>.

and asylum seekers were released only after appeals and petitions had been filed on their behalf. At times, the release was assured only when their case was brought before the HCJ. Unlike other proceedings where deprivation of liberty is concerned, those held under the Criminal Procedure were not entitled to legal representation.

Several proceedings concerning the legal and constitutional challenges manifested by the procedure reached the HCJ. The Public Defender's Office joined HRM's position as an *amicus curiae* in several of the proceedings and asked the court to void the procedure. In none of those proceedings did the court rule on the constitutionality of the Criminal Procedure, adopting instead a case-by-case approach.

On September 16, 2013, while some of the legal proceedings against the procedure were still pending, the court issued its verdict on the matter of Adam.⁸⁹ The ruling abrogated the 3rd Amendment to the Anti-Infiltration Law, while emphasizing that a person should not be held in detention for the purpose of deportation when no such deportation proceedings are taking place. In response, on September 23, 2013, the Attorney General announced that he had decided "to freeze, for the time being, the implementation of the [Criminal] Procedure, until the matter is examined in full."

On January 29, 2014, the freeze period ended and the "Guidelines for Coordinating the Handling of Infiltrators Involved in Criminal Proceedings," was born. The guidelines are grounded on the exception to the Entry to Israel Law, which stipulated that a person would not be released from detention if they pose a threat to national security, public peace or public safety.

According to the guidelines, a person can be placed in immigration detention after their arrested by the Israel Police on suspicion of their involvement in committing a crime, as long as they meet the conditions stipulated in the guidelines. This meant that a person could be arrested for indefinite periods when there is not enough evidence to try and convict them, without the right to a State appointed defense, and without mandatory review by the judiciary. A number of proceedings that dealt with the legality of the guidelines reached the HCJ, but as in its rulings on the procedure that preceded them, the court avoided deciding on the constitutionality at the heart of these cases.⁹⁰

⁸⁹ See above.

⁹⁰ See paragraph 27 and the end of paragraph 28 on the decision in Request to Appeal 298/14 *the State of Israel vs. Muhammad Ismail* (March 17, 2014); HCJ 8662/15 *HRM vs. the Attorney General* (January 5, 2016); and Request to Appeal 4334/16 *Weldemariam vs. the State of Israel* (October 6, 2016).

The Criminal Guidelines continues to be in effect as of the writing of this report. Currently, several dozen asylum seekers are being held based on the guidelines, some of them for petty offences such as traffic violations or the possession of small amounts of recreational drugs.⁹¹

⁹¹ For more information on the Criminal Guidelines and Criminal Procedure, see: HRM, *Ye Shall Have One Law – Administrative Detention of Asylum Seekers Implicated in Criminal Activity*, September 2017: <http://bit.ly/2PZDbg2>.

Saharonim. Photo: Activestills



Landmark Proceedings against the Detention of Refugees and Migrants

The right to political asylum and to be released pending deportation: HCJ 4702/94 *Al-Tay vs. the Minister of Interior*

The petition was filed by ACRI against the deportation of asylum seekers from Iraq due to the threat to their lives and against their prolonged detention, in light of the State's inability to deport them. The HCJ ruled that their deportation to a third country is in violation of the law, if it is clear that they would not be granted protection from deportation to their countries of origin there.

Judicial review over detention prior to deportation: HCJ 4963/98, HCJ 6536/02 and HCJ 1461/06

Following a legal battle by human rights organizations, the Detention Review Tribunal for Undocumented Migrants was established. The Tribunal carries out semi-judicial review over the detention of undocumented migrants. A central administrative office of the Tribunal was established and the duration from the moment of the arrest until the detainees are brought before the Tribunal was reduced to 96 hours. The legal and advocacy work, particularly in the Knesset, led to the codification into law of the Tribunal's power and authority, setting the conditions for release and allowing for the *pro bono* representation by those who are not attorneys.⁹²

Release of trafficking victims from detention: Hearing Request 091548/00, HCJ 967/01 and HCJ 3536/01

Following these proceedings, the State began releasing from detention women who testified against their traffickers, and the Israel Police covered their living expenses during the proceedings. In 2004, the Maagan Shelter for female victims was established. Starting in 2006, the police began transferring the trafficking victims directly to the shelter without arresting them. In 2007, the Atlas Shelter for male victims of human trafficking and forced labor was established.

⁹² See chapter 2 above.

Annulment of the detention and deportation of undocumented migrants and improving their detention conditions: HCJ 9402/02

A petition was filed against the decision by the Prime Minister at the time, Ariel Sharon, to arrest and deport 50,000 undocumented migrants; against the establishment of a special police unit to track and arrest undocumented migrants; a demand for a solution to the overcrowding crisis in the facilities holding those slated for deportation, due to tangible concerns that these arrests would be accompanied by gross human rights violations, unjustified arrests of migrant holding valid visas, police brutality and prolonged detention of people who could not be deported. The petition was rejected after the State committed to establish another detention facility, providing enough beds for detainees (instead of forcing them to sleep on floors), that those slated for deportation would be held separately from prisoners held on criminal charges, and that a second adjudicator would be appointed to the Detention Review Tribunal.⁹³

"Closed Skies:" Administrative Petition (Jerusalem) 420/02, Administrative Appeal 1847/02 and HCJ 9402/02

In 2002, legal and public advocacy led authorities to temporarily adopt a policy of "closed skies" in an effort to prevent the entry of new migrant workers and avoid deporting migrant workers already present in the country who do not have an employer. This allowed for the release of 101 Chinese workers and prevented their deportation. In addition, migrants who were already in Israel and had lost their legal status were allowed to rejoin the labor force.

Depositing bail for release from detention: Administrative Appeal 1277/02 and HCJ 11898/04

The proceedings led to the promulgation of a procedure ensuring the release of migrant workers on bail, similarly to the option given to detainee citizens of Israel. The State committed to allowing migrants to post bail not just at the Ben Gurion Airport offices, but also in the Immigration Authority offices in Afula and Beer Sheva. In addition, the ruling determined that detainees could be released during all hours of the day and night, and that bail could be posted in cash and not only as bank

⁹³ Shmuel Deklo, *Petition to the HCJ to Cancel Decision to Deport 50,000 Migrant Workers*, Globes, November 6, 2002. Available in Hebrew: <http://bit.ly/2qDV1fs>. See also footnote 15, *Immigration Administration or Expulsion Unit?*

guarantees, which migrants often lack.

Release of undocumented migrants after 60 days: Request to Appeal 173/03

ACRI filed an appeal against a decision of the Detention Review Tribunal, which rejected requests to order the release on bail of four Jordanian detainees held in immigration detention for over four months. The court accepted ACRI's argument, ruling that after 60 days, an undocumented migrant who cannot be deported must be released. The State appealed the decision to the HCJ, which ruled in favor of the State. While the District Court ruled that the State is obligated to release the detainees after 60 days if the exceptions (found in article 13(F)(B) of the Entry to Israel Law) do not exist in the case, the HCJ ruled that in general, a person ought to be released, though there is room for discretion for not releasing the detainee if there is significant public interest in keeping the person in detention.

False Imprisonment: Tort Claim 7256/02

A tort claim for false imprisonment was filed by a Ghanaian citizen who was released on bail, followed all the conditions of his release, and was nonetheless arrested and held in detention for four days. The lawsuit ended with a settlement, in which the petitioner received compensation and a partial reimbursement of the confiscated bail money he deposited.

Abrogating the regulation prohibiting detainees awaiting flights at the Ben Gurion Airport from meeting attorneys: HCJ 6431/04

Following the petition, the State amended the regulation. Instead of prohibiting meetings with attorneys at the airport altogether, such a prohibition is to be applied only after the detainee has already undergone a security control check, or when the authorities believe that the meeting would cause a security breach.

Regulation on handling police violence: HCJ 3832/05

The petition led to the promulgation of a special regulation for handling complaints of police brutality during arrests of undocumented migrants prior to their deportation.

Release of Sudanese asylum seekers detained under the first iteration of the Anti-Infiltration Law: HCJ 3208/06, HCJ 3270/06, HCJ 3271/06 and HCJ 3272/06

Four petitions were filed against the detention of asylum seekers from Sudan under

the Anti-Infiltration Law. Following these petitions, Adv. Elad Azar was appointed as special advisor to the Minister of Defense and began releasing asylum seekers to agricultural communities as alternatives to detention, and later released them altogether without further restrictions.⁹⁴

The right to legal representation and due process: Request to Appeal 4891/06

The ruling abrogated the decision of the District Court due to faults in the process: lack of interpreters, lack of legal representation and a significant violation of the right to be heard.

The right of unaccompanied minors to legal representation: Administrative Appeal 379/06

Following these proceedings it was decided that every unaccompanied minor in detention is entitled to representation by the public defender's office. Following the verdict, the State decided that the Legal Aid Department at the Ministry of Justice would be assigned to represent the minors.

New age test procedures: Administrative Appeal 102/07

A number of petitions filed in early 2007 led the State to update medical procedures to determine the age of minors, ensuring greater reliability.

Medical Examinations as a pre-condition for release: HCJ 10077/08

Following a joint petition with (Physicians for Human Rights Israel (PHRI), authorities began carrying out medical examinations that allowed for the release of asylum seekers. These examinations were set as a pre-condition for release by the Detention Review Tribunal.

Release conditions that effectively prevent the release of detainees who cannot be deported: Request to Appeal 7267/09

An appeal was filed after the Tribunal set an excessively high bail and house arrest as a conditions for the release of a detainee who could not be deported due to lack of diplomatic relations with Niger. The appeal was accepted and the bail reduced to allow for the release of the detainee.

⁹⁴ See chapter 7 above.

Proceedings against the Anti-Infiltration Law

- **HCI 7146/12 *Adam vs. the Knesset***

A petition against the 3rd Amendment to the Anti-Infiltration Law. The HCJ ruled that the detention of asylum seekers in Saharonim for unlimited durations,⁹⁵ and for the purpose of deterrence, is unconstitutional and voided the law.

- **HCI 8425/13 *Gabrieslasi vs. the Knesset***

A petition against the 4th Amendment to the Anti-Infiltration Law. The HCJ ruled that the detention of asylum seekers in Saharonim for a period of 12 months, followed by open-ended detention in Holot, is unconstitutional, voiding the amendment to the law.⁹⁶

- **HCI 8665/14 *Desta vs. the Knesset***

A petition against the 5th Amendment to the Anti-Infiltration Law. The HCJ ruled that the detention of asylum seekers for a period of 20 months in Holot is disproportional and voided the relevant article of the law.

The release of detainees transferred from Saharonim to the Holot: HCI 7199/14

The petition was filed demanding the release of 138 asylum seekers held in Saharonim under the 3rd Amendment of the Anti-Infiltration Law and who were transferred to Holot upon the implementation of the 4th Amendment to the Anti-Infiltration Law, which was carried out in a faulty administrative procedure, without holding a hearing, without setting criteria, and without an examination of individual cases as the State had committed to do. Following the petition, the State announced it would release the 138 petitioners and later released 41 additional asylum seekers who were held in Saharonim and transferred to Holot in identical circumstances.

Legal proceedings on the conditions in Holot:⁹⁷

HCI 177/15: Heating and cooling systems in the cells.⁹⁸

HCI 4581/15: The prohibition of bringing food into Holot.

⁹⁵ The amendment to the law was passed as a Temporary Order for a period of three years.

⁹⁶ See also the ruling in HCI 7385/13 *Eitan vs. the State of Israel*.

⁹⁷ See footnote 5.

⁹⁸ For more information see: ACRI, *Immediately Provide Heating Systems for Asylum Seekers Held in Holot*, January 2015. Available in Hebrew: <http://bit.ly/333gRaj>.

HCJ 4602/16: The overcrowding in cells.

HCJ 4386/16: Bringing personal items into the facility.

HCJ 4391/16: The services provided by PIBA at the Holot facility.

HCJ 4388/16: Education and cultural activities in Holot.

HCJ 4389/16: Computers in Holot.

HCJ 3855/17: The "pocket money" given to detainees in Holot.

Detention of asylum seekers for the purpose of deportation to Rwanda: Administrative Appeal 8101/15 *Tsegeta vs. the Minister of Interior*

The court found that while such deportations to a third country [Rwanda] are not unlawful in principle, due to the declaration of the State according to which the agreement with the third country stipulates that no person will be deported without their consent – it is unlawful to detain a person merely for refusing deportation, or in order to coerce consent. The ruling effectively prevented the forcible deportation of asylum seekers.⁹⁹

The detention of asylum seekers under the Criminal Guidelines: Request to Appeal 7696/16

The HCJ refused to rule on the legality of the Criminal Guidelines, but ruled that in the case of sex offences, the Law of Protecting the Public from Sexual Offences (2006) should be applied instead of resorting to immigration detention.¹⁰⁰

The deportation to third countries and release of detainees who resisted the deportation: HCJ 2445/18, HCJ 679/18 and HCJ 733/18

Following the legal proceedings, the State was forced to admit that the agreement with Rwanda was not amended in a way that would allow for forcible deportation, and thus the agreement does not meet the criteria stipulated by the ruling in the matter of Tsegeta (see above). In addition, it became apparent that the State failed to reach an agreement with Rwanda that would allow deportation without consent. All those detained in Saharonim for refusing deportation were released.¹⁰¹

⁹⁹ For more information see ACRI's website, available in Hebrew: <http://bit.ly/366BlvD>.

¹⁰⁰ See footnote 90, *You Shall Have One Law*.

¹⁰¹ See footnote 87.



Holot. Photo: Activestills

Judicial review of detainees whose entry to Israel was refused: Request to Appeal 8192/18

The court ruled that the Entry to Israel Law distinguishes between the procedure concerning detention of undocumented migrants in Israel and those whose entry was denied. The court ruled that holding those whose entry was refused is not subject to judicial review of the Detention Review Tribunal, but to that of a Border Control Officer, a PIBA clerk. The detainee can appeal this decision to the Appeals Tribunal. Following these proceedings, the regulation was amended, and the first periodic review of the detention was set for 14 days from the moment of the arrest, followed by a mandatory review every seven days until the deportation of the detainee. Currently, a request for an additional hearing on the matter is pending at the HCJ.

Summary

Since its establishment in 1998, HRM has visited the various detention facilities holding undocumented migrants and asylum seekers slated for deportation. HRM is the only Israeli organization to regularly and frequently visit the detainees, provide them with assistance and document the conditions of their detention. HRM's visits to these facilities over the years have allowed us to identify trends, document them, and advocate to policy changes to promote alternatives to the detention of undocumented migrants.

Over the years, the populations of migrants and asylum seekers arriving in Israel have changed, as have the populations in detention. The policies of the Israeli authorities toward migrants and asylum seekers have also changed, mostly as a result of the legal and public advocacy work of HRM and fellow human rights organizations. However, the over-arching policy toward these communities has not changed at all: the State continues to detain undocumented migrants, even when their deportation is not possible, as a default option. Detention is the dominant strategy in the policies of Israeli governments in handling unwanted immigration to Israel. Detention is used as a method of organization, management and deterrence of migrants and asylum seekers from remaining in Israel, and as means to exercise pressure and coerce detainees to leave the country.

According to the guidelines of the UNHCR, the IDC and the Association for the Prevention of Torture (APT),¹⁰² detention should be the last resort; particularly when dealing with vulnerable populations, alternatives to detention should be the preferred policy. The guidelines also state that detention is an extraordinary tool and can be justified only for a legitimate reason, and should be adopted only when it is necessary, reasonable and proportional; it must not be arbitrary, discriminatory and open-ended; the special circumstances and needs of the detainees must be taken into account; and detention should be subject to independent monitoring and inspection.

¹⁰² IDC, Association for the Prevention of Torture (APT), and the UNHCR. *Monitoring Immigration Detention: Practical Manual*, 2014: <http://bit.ly/2sHGnF4> (PDF).

Therefore, HRM continues to assist detainees, document conditions of detention and act to change these policies. This is the work at the heart of HRM's action. We call on Israeli authorities to adopt more humane, economical and effective alternatives to the detention of undocumented migrants especially when it comes to the detention of minors, which should be avoided altogether.

A family in Givon. Photo: Avshalom Shoshoni, by courtesy of Maariv.



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