



TRAPPED IN LIMBO

Israel's Policy of
Avoiding Making
Decisions in Well-
Founded Asylum Claims

Hotline for Refugees and Migrants



Trapped in Limbo

Israel's Policy of Avoiding Making Decisions on Well-Founded Asylum Claims

September 2020

Writing and research: Sigal Rozen, Shira Abbo, Stav Paskay.

We would like to express our gratitude to the Law Office Orrick, White & Case for the assistance in conducting the comparative study included in the report.

Editing: Dr. Ayelet Oz and Emily Zoffer

Design: Dr. Ayelet Oz

About the Hotline for Refugees and Migrants

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

75 Nahalat Binyamin, Tel Aviv–Yafo, 6515417 Israel

E-mail: info@hotline.org.il

Telephone: +972-(0)3-5602530

Website: hotline.org.il



Published with the generous support of the Heinrich Boll Stiftung

Table of Contents

Introduction	3
The Sad State of Israel's Asylum System	4
Historical Background and Denial of the Right to File an Asylum Claim	4
The Delay in Examining the Asylum Applications of Eritrean Citizens	9
The Delay in Examining the Asylum Applications of Sudanese Citizens	11
The Abuse of the Asylum System by Scammers and Human Traffickers	16
The Pace of Examining Asylum Applications Around the World	17
Life in Israel with a Pending Asylum Application	18
Summary and Recommendations	20

Introduction

“The prolonged time period the State has taken to handle these requests - not to mention ‘dragging their feet’ - leads to the applicants being trapped in a continuous and impossible state of limbo regarding their status, and with grave consequences for their rights’ ” .¹

The Chief Justice of the Supreme Court, Justice Esther Hayut.

The latest data provided by the State of Israel concerning the asylum applications of Eritrean and Sudanese citizens paint a grim picture. Over a decade and a half after the first asylum seekers crossed the border into Israel, and over five years after entry through the border between Egypt and Israel completely halted² - the asylum requests of 13,467 Eritrean citizens and 4,673 Sudanese citizens remain pending. These cases amount to about two thirds of Eritrean and Sudanese asylum seekers residing in Israel. Out of the total number of asylum applications that remain pending - over a thousand were filed by Sudanese residents who fled Darfur, the Nuba Mountains, and the Blue Nile region - areas that witnessed genocide and ethnic cleansing, whose inhabitants are recognized as refugees at high rates across the world.³

This report will examine the asylum applications that have been awaiting a decision for many years, and describe how the State misleads the courts to fend off a ruling that would force it to decide on these cases. The report will also clarify which rights are denied to the asylum seekers during the long years of awaiting a decision. The report will feature the testimonies of an asylum seeker from Congo who has been waiting for 20 years for the State to examine her request; an asylum seeker from Sudan, a survivor of the genocide in Darfur, who has been waiting for 14 years for his request to be examined; and a recognized refugee from Eritrea, who waited for eight years from the moment when he managed to apply for asylum and until he was granted refugee status by the Population, Borders, and Immigration Authority (henceforth: the Immigration Authority).

¹ High Court of Justice (HCJ) ruling Gerseger and others vs. The Knesset. Issued on April 23, 2020, para 46.

² The Population Immigration and Borders Authority (PIBA), [Data on Foreigners in Israel: Summary for 2019](#), March 2020, p. 7.

³ See fn 1.

The Sad State of Israel's Asylum System

Historical Background and Denial of the Right to File an Asylum Claim

The various transformations of Israel's asylum system and its numerous ongoing failures have been described extensively in three prior reports of the Hotline for Refugees and Migrants, and therefore, we will not expound on them here.⁴ We will briefly recap that until 2001, a handful of asylum applications were filed annually to the UN High Commissioner for Refugees (UNHCR) in Jerusalem. The UNHCR's representatives interviewed the applicants and forwarded the applications for determination by the UNHCR headquarters in Geneva. The decisions by Geneva were then forwarded to the Israeli Minister of Interior who decided whether to accept them. Starting in 2001, a hybrid system was put in place and the requests were received by the UNHCR in Israel, which passed on its recommendations to an Israeli inter-ministerial committee, which passed on its recommendation onto the Minister of Interior. Although the number of requests was small, the committee deliberated on a few asylum cases that were recommended for recognition, which usually led to a positive recommendation by the Minister of Interior as well.⁵ In 2008, the authority for identifying refugees was handed over to Immigration Authority inspectors, and in July 2009, the Refugee Status Determination (RSD) Unit was established within the Immigration Authority, which became the actor in charge of accepting and processing asylum applications.⁶

The epitome of the State's mishandling of asylum applications can be seen in its treatment of asylum seekers from Congo. The State provided the Hotline for Refugees and Migrants (HRM) with (somewhat inconsistent) data concerning their asylum applications that demonstrate the extent of the system's failures over recent decades. Most asylum seekers from Congo in Israel fled their country over a decade ago, but because (as of 2003) they were protected from deportation, the Immigration Authority did not examine their asylum requests at all: in December 2018, in response to a Freedom of Information Request (FOI request), the Immigration Authority reported that out of 314 Congolese asylum seekers residing in

⁴ HRM, [Until Our Hearts Are Completely Hardened: Asylum Procedures in Israel](#), March 2012. HRM, [No Safe Haven: Israeli Asylum Policy as Applied to Eritrean and Sudanese Citizens](#), December 2014. HRM, [Falling On Deaf Ears, Asylum Proceedings in Israel](#), October 2018.

⁵ For more, see: *Until Our Hearts Are Completely Hardened: Asylum Procedures in Israel*, fn. 4, p. 9-10.

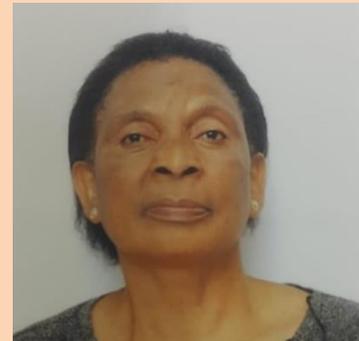
⁶ *Ibid.*, pp. 4-5.

Israel, 311 filed asylum applications. Decisions were made concerning 59 cases, but no information was provided regarding the decisions made on these cases. The Authority also reported that 12 of the applications were rejected (without expounding on what grounds, whether due to technical issues such as a missed interview or a due to a substantive rejection).⁷

Two months prior to the aforementioned FOI answer, the Immigration Authority informed Haaretz that 404 Congolese citizens resided in Israel, and that 208 asylum applications filed by them were still pending.⁸ We believe that the data provided through the FOIA are more likely to be true, as our staff met and interviewed over 200 asylum seekers from Congo in 2018. The Immigration Authority confirmed that 176 of their asylum applications are still pending, and only one file was closed because the applicant did not show up for an interview.⁹ At the time, about half of the asylum applications have gone without a determination for over a decade.¹⁰

Janette - Awaiting a Determination for 20 Years

Janette escaped to Israel 27 years ago from Zaire (today, the Democratic Republic of Congo). At the time, Zaire was ruled by the dictator Mobutu Sese Seko. In 2001, Janette filed an application for political asylum in Israel. At the time, Israel for the first time applied a non-removal policy for citizens of Congo who fled to Israel due to the civil war raging in the country, which led to the death of over four million people. Janette filed her asylum application at the representative office of the UNHCR in Israel, which was at the time the body responsible for examining asylum applications and advising the Ministry of Interior in this regard. Janette recalls being interviewed by a UN representative, and more recently she was granted a B1 work permit. In the past, her permit was extended every three months, and in recent years, every six months. In 2018, HRM representatives were able to verify that Janette's application, along with those of almost all citizens of Congo in Israel, are yet to be examined. She has been awaiting a decision for 20 years.



⁷ Lee Yaron, [Israeli Court Suspends Expulsion of Around 400 Congolese](#), *Haaretz*, December 31, 2018.

⁸ Ibid.

⁹ Based on information gathered by the HRM during October-December 2018.

¹⁰ For more, see on the website of the HRM: <https://hotline.org.il/press/congodeportationcanceled/> (Hebrew)

Janette has lived in Israel for 27 years without any social rights. She speaks fluent Hebrew, is integrated into society and Israeli culture, but has lived by herself all of these years. If her application had been examined and she had been recognized as a refugee, she could have reunited with her family in Israel, or visited them in other Western countries where some of them gained asylum. Although she is an elderly woman approaching the age of retirement, Janette is worried she will not be able to retire, since she is not entitled to pension or any other type of financial assistance.

Before 2013: Blocking the Right to Apply for Asylum

While citizens of Congo and other countries could file asylum applications if they were able to locate the UNHCR office in Israel, asylum seekers from Sudan and Eritrea could not file asylum applications at all until late 2012. Israeli authorities told those attempting to file asylum applications that they were protected from removal and therefore, there was no reason to examine their asylum requests. This practice violated their right to seek asylum.¹¹ Given that most asylum seekers filled out various forms at the UNHCR offices, and that some even underwent interviews there, many asylum seekers believed that by doing so, they had filed official asylum claims. In addition, since no asylum seeker from these countries was ever granted refugee status, those who realized they had not filed an asylum claim did not see a reason to go through a bureaucratic process that would yield no results.

Upon the introduction of the 3rd Amendment to the Anti-Infiltration Law on June 3, 2012, asylum seekers from Sudan and Eritrea entering Israel were jailed in Saharonim Prison. Only filing of an asylum request could have spared them from three years of detention (for citizens of Eritrea) or indefinite detention (for Sudanese citizens, as nationals of an enemy state). This is because having an asylum application that failed to be examined within nine months was grounds for release.¹²

However, practically, the detained asylum seekers had no way to apply for asylum. Detainees who repeatedly requested asylum application forms were given a response that the detention guards did not possess those forms.¹³ This contravenes the Asylum Seekers Handling Procedure, issued in 2011, which clearly states: “In detention facilities...informational leaflets will be present about how to file an application for political asylum...[that cover] the regulation on handling requests, the obligations of

¹¹ Administrative Appeal 8908/11 Asafo vs. The Ministry of Interior, July 17, 2012.

¹² The Anti-Infiltration Law, amendment number 3, January 12, 2012.

¹³ HRM and Human Rights Watch, [Israel: Detained Asylum Seekers Pressured to Leave](#), March 13, 2013.

asylum seekers, and the rights of the asylum seeker to contact legal representatives based on his choice, and the legal representation to which he is entitled in the process.”¹⁴

Because the forms were not provided to the detainees, from September 2012 until mid-February 2013, representatives of the HRM attempted to file 320 asylum applications on behalf of those who could not file them directly in detention. For the purpose of filing the applications, the HRM approached the Ministry of Interior, asking to receive the official forms for filing asylum applications, given that the regulation concerning the handling of asylum applications did not elaborate on how the application ought to be filed.¹⁵ In response, authorities claimed that detainees were provided with explanations on how to file asylum applications. The HRM sent applications and power of attorney forms by fax to the offices of the Immigration Authority. In January 2013, the Ministry of Interior informed the HRM that all 320 requests were not valid, because the applications were required to be filed on official forms (forms, which as mentioned, were not available, and the request to receive them went unanswered). Following the HRM’s efforts, in February 2013 representatives of Immigration Authority in detention facilities began to provide asylum seekers with the official forms, but only in some areas of the facilities and only in English.¹⁶

In March 2013, the UNHCR declared that Israel's prevention of allowing asylum seekers to file claims until February 2013, combined with its policy of prolonged or open-ended detention stemming from the inability to file an asylum claim, amounted to significant pressure to compel asylum seekers to leave Israel. This form of pressure is not permissible under international law. At the time, about 2,000 Sudanese and Eritrean citizens were detained in Saharonim Immigration Prison, most of them for over six months, without being able to file an asylum application. Some of them were told that if they insisted on filing asylum applications, they would spend many years in detention.¹⁷ An asylum seeker from Sudan told a representative of the HRM on February 12, 2013:



¹⁴ Regulation on handling applications for political asylum, number 5.2.0012.

¹⁵ Ibid.

¹⁶ See fn 13 above.

¹⁷ Ibid.

*During the first interview I told [officials] that I want to apply for political asylum. When I said that, the interrogator banged on the table with his fist and told me that in Israel, there is no such thing as political asylum, that all of us only come to work and that we must return [to Sudan]. ”*¹⁸

On February 13, 2013, at least 34 Eritrean detainees in Saharonim Immigration Prison protested against what they described as a refusal of Israeli authorities to allow them to file asylum applications. They were moved to the Ktziot Detention Camp, where they had to live in tents during winter in the Negev Desert.

2012-2020: “Dragging Their Feet” and Continuous Failures in Examining Asylum Applications

Even once it became possible to file asylum applications, the State has purposefully dragged its feet and avoided making determinations on Sudanese and Eritrean asylum applications. The ongoing years-long delay in examining Sudanese and Eritrean asylum applications was examined in the State Comptroller's report in May 2018. Among other things, the Comptroller mentions that earlier in 2018, the State informed the Attorney General that “there is a real legal challenge in justifying the pace of handling asylum applications, and particularly the absence of determinations made on requests filed a long time ago by subjects of Eritrea and Darfur [sic].”¹⁹ In a ruling issued in April 2020, the Chief Justice of the Supreme Court, Justice Esther Hayut, also criticized the State's "dragging its feet" in this regard.²⁰



In the two years that have passed since the issuance of the State Comptroller report, the inter-ministerial committee, whose role is to examine asylum applications, recommended recognizing only 14 individuals as refugees (three in 2013, two in 2019, and nine in 2020), not all of them Sudanese or Eritrean.²¹ A study recently conducted by HIAS Israel uncovered that from the establishment of the RSD Unit in 2009 until May 2020, the Ministry of Interior received 73,889 asylum applications on political grounds.²² Most applications were filed by citizens of Ukraine, Eritrea, Georgia, and Sudan. The study also uncovered that

¹⁸ Ibid.

¹⁹ State Comptroller report, “The Handling of Applicants for Political Asylum in Israel, p. 1419, May 8, 2018. See an English summary at: [State Comptroller Harshly Criticized Israel’s handling of Asylum Requests](#)

²⁰ HCJ 2293/17 Gerseger and others vs. The Knesset, issued on April 23, 2020, para 46.

²¹ HIAS, [“0.06% - The Numbers Speak for Themselves: The Israeli Asylum Process”](#) August 2020, p. 16.

²² Ibid.

the asylum applications decided in 2019 waited for an average period of 28.1 months before receiving a decision. Over half of the 34,624 asylum applications filed since 2011 are still awaiting a decision.²³ The paralysis of the asylum examination system largely stems from prioritizing the examination of applicants who can be deported if their claim is rejected, as well as a purposeful policy against examining the asylum applications of Sudanese and Eritrean nationals.

The Delay in Examining the Asylum Applications of Eritrean Citizens

As mentioned, prior to the first months of 2013, Eritrean and Sudanese nationals could not file asylum applications, since the Immigration Authority claimed that they were safe from deportation under their “group protection,” and that there was therefore no point in examining their individual asylum claims.²⁴ Only in May 2013 did the Authority begin examining - and rejecting en masse - the asylum applications of Eritrean nationals. Thousands of applications were rejected based on a legal opinion formulated by the Immigration Authority, which stated that those who defected from military or national service in Eritrea should not be considered refugees, even if defection would mean that the individual could be persecuted in their home country. The Authority contended that those defectors must provide an additional reason for gaining recognition as refugees. Given this position, it is no wonder that according to Immigration Authority data, until June 2019, Israel recognized only 13 Eritreans as refugees under the Convention Relating to the Status of Refugees.²⁵

In 2016, in the context of the legal proceedings in the “Msgena case” led by the Tel Aviv University Refugee Rights Clinic, the Appeals Tribunal for the first time ruled against the State's policy concerning the non-recognition of defectors as refugees. The Tribunal ruled that although defection in itself does not constitute grounds for asylum, if the defection also constitutes a political act, the punishment for which in Eritrea amounts to persecution under the Refugee Convention, then the person would be entitled for a refugee status.²⁶ The State appealed the decision. As part of the prolonged legal proceedings in this case, the State also issued new guidelines concerning the examination of asylum claims of Eritrean asylum

²³ Ibid.

²⁴ Administrative Appeal 8909/11 Asafo vs. The Ministry of Interior, July 17, 2012.

²⁵ The data were obtained as part of the legal proceedings in HCJ 2293/17 Gerseger and others vs. The Knesset - State response dated June 19, 2017.

²⁶ Appeal 1010-14 Msgena vs. The State of Israel. Verdict issued on September 4, 2016.

seekers, which were never fully published in public. The Immigration Authority informed the Court that 10,000 asylum applications that were yet to be examined will be examined based on the new guidelines. The State also committed to re-opening about 3,000 previously rejected asylum applications under the new guidelines, if the asylum seeker has not left Israel in the meantime.²⁷ As for the appeal itself, the State withdrew its objection and on November 20, 2019, the decision of the Appeals Tribunal was made final, and the appellant was recognized as a refugee. It is noteworthy that in its final request to vacate the appeal, the Immigration Authority claimed that this is "a decision given in a particular case by a legal instance that does not issue precedent-setting rulings, and in any case, it is clear that the decision is not a precedent that obligates [the State]," ²⁸ thus contradicting the position of the State at the start of the legal proceedings, when it claimed that the appeal will have a broad negative impact on the examination of asylum claims of all Eritreans.²⁹

Following the conclusion of the proceedings concerning the Msgena case, the Immigration Authority resumed examining the asylum applications of Eritreans. Since July 2019, the Authority examined 32 asylum applications and made determinations on 21 of them. The inter-ministerial committee recommended recognizing nine of the asylum seekers whose cases received a determination during this period.³⁰ Of them, the HRM is familiar with the cases of four Eritrean asylum seekers, who indeed were invited to the offices of the Immigration Authority to receive refugee status. At the same time, in recent months, the Authority began rejecting asylum applications of Eritreans, even in cases that appear to justify the granting of refugee status.

²⁷ Lee Yaron, [Announcing New Criteria, Israel to Revisit All Asylum Requests by Eritreans](#), *Haaretz*, July 17, 2019.

²⁸ *Ibid.*

²⁹ See para 19 of the State's response in November 2018, where it stated that "the determination on this appeal has potential ramifications on other asylum applications of infiltrators who've arrived from Eritrea, and therefore, a delay has occurred in handling asylum applications of infiltrators who have arrived from Eritrea."

³⁰ See fn .21.

Solomon - Awaited a Decision for Eight Years

Solomon escaped Eritrea and entered Israel in May 2012. Shortly after his entry, the State began enforcing the 3rd amendment to the Anti-Infiltration Law. In June of that year, he underwent a hearing during which he was told that unless he returns to Eritrea, he will remain in Saharonim Prison for at least three years. Solomon was released from Saharonim 18 months later, owing to a successful appeal filed by the human rights organizations that led to the abrogation of the 3rd amendment to the Anti-Infiltration Law.



Solomon is one of the 320 detainees in Saharonim on whose behalf the HRM contacted the Immigration Authority between September 2012 and February 2013, as part of the effort to assist them in filing asylum applications from prison. During his detention in Saharonim, Solomon recalls being interviewed by representatives of the Immigration Authority on four occasions. But throughout the next seven years, his request remained pending and he did not receive any update about it from representatives of the Immigration Authority. Only in July 2020, Solomon was informed that his application for political asylum in Israel has been accepted and he was recognized as a refugee.

After he obtained refugee status, Solomon was given a temporary residency (A5 permit) in Israel, he was registered at the National Insurance and an HMO, and is now entitled to the full set of benefits granted to residents in Israel.

The Delay in Examining the Asylum Applications of Sudanese Citizens

According to official data of the Immigration Authority, over the years, to date, only one Sudanese asylum seeker was granted refugee status under the Refugee Convention.³¹ Over the past decade, many other Sudanese turned to legal instances to obligate the State to make a determination on the asylum claims

³¹ Ilan Lior, [Israel Grants Refugee Status to Sudanese Asylum Seeker for First Time](#), *Haaretz*, June 23, 2016.

they had filed, but to date, the Immigration Authority refused to examine the applications, and courts have avoided obligating the State to do so.³²

One of the first proceedings on this matter was filed in January 2014, when the HRM filed a petition to the district court on behalf of Mutasim Ali, one of the leaders of the refugee community, who received a summons for detention in the Holot facility. Following the filing of the petition, which demanded that the Ministry of Interior make a determination on his application, his detention at the facility was delayed for a while, only to be renewed later. In May 2014, Ali was forced to report to the Holot facility to begin his detention period. Between 2014-2016, the HRM filed three administrative petitions on behalf of Mutasim Ali to district courts, as well as two appeals and one petition to the High Court of Justice, demanding that the State make a determination on the asylum application he had filed. During 2014, an interview was set to examine his asylum application, but even after it, the request remained without any response for a long time. On July 6, 2015, the attorney general ordered the release of Mutasim Ali from the Holot Detention Facility due to the delays in examining his asylum application, but the Immigration Authority persisted in its refusal to make a decision on his application.³³ Only in June 2016, the minister of interior accepted the asylum application filed by Ali, granting him recognition as a refugee by the State of Israel.³⁴ This occurred at a time when merely four Eritrean citizens were recognized as refugees by Israel. Mutasim Ali was the first Sudanese citizen, the first Darfur genocide survivor, to be recognized as a refugee in Israel. It is worth mentioning that during the legal deliberations on Mutasim Ali's case, one of the arguments presented by the State were that it is not possible to recognize him as a refugee, since his personal circumstances are similar to those of the rest of the asylum seekers from Darfur, and the State ought to develop an overall policy concerning Darfuris.³⁵ However, despite these arguments, even after Ali was granted refugee status, the State did not find the need to recognize other Darfuris as refugees.

In July 2017, 24 asylum seekers from Darfur filed a petition to the Supreme Court concerning the policy of the minister of interior, who has refused to issue decisions on their pending asylum applications.³⁶ The Court merged the hearings on this petition with another one filed by other 11 asylum seekers from Darfur

³² Administrative Petition 2863/14 Mutasim Ali vs. the Ministry of Interior; Administrative Appeal (Tel Aviv) 40239-02-14 Mutasim Ali vs. the Ministry of Interior, Administrative Petition 8667/17 Ali vs. the Ministry of Interior, Administrative Petition 3325/15 Ali vs. the Ministry of Interior; Administrative Petition (Beer Sheva) 61469-02-15 Ali vs. the Minister of Interior.

³³ Avi Lewis, [Weinstein orders asylum seeker freed after years of appeals](#), *Times of Israel*, July 7, 2015.

³⁴ Ilan Lior, [Israel Grants Refugee Status to Sudanese Asylum Seeker for First Time](#), *Haaretz*, June 23, 2016.

³⁵ Administrative Appeal (Tel Aviv) 40239-02-14 Mutasim Ali vs. the Ministry of Interior, State report from March 5, 2014.

³⁶ HCJ 4630/17 Adam Gobara Tagal and others vs. The Minister of Interior.

who made a similar claim,³⁷ and later the hearings on two other petitions on this matter were put on hold until a ruling was made on the first two petitions.³⁸ On the eve of the first hearing on the petition, the minister of interior informed the court that he intends to grant legal status based on special humanitarian grounds to 300 Darfuri asylum seekers. In January 2018, in compliance with a decision of the Supreme Court, the Ministry of Interior publicized the criteria for granting that status.³⁹ In August 2018, the minister of interior informed the Supreme Court that the State will grant humanitarian status to 300 additional asylum seekers, hailing from Darfur, the Nuba Mountains and Blue Nile regions, who are over the age of 40 and entered Israel until 2012.⁴⁰ Only a handful of women among the community, who met these random criteria, were awarded this legal status.

Two months later, in October 2018, the minister informed the Court that he will stop granting humanitarian status to groups of asylum seekers, and that he intends to make determinations on the individual asylum applications of Darfuris.⁴¹ However, in an update by the State to the Court in December of that year, it turned out that despite the promise to resume examining asylum applications, in reality no change occurred in their situation and at the time, there was no clear timeline for the examination of their requests.⁴²

In March 2019, during another hearing on the petitions at the High Court of Justice, the State admitted that out of the 4,500 asylum applications of Darfuris, only ten are expected to go up to the review of the inter-ministerial advisory committee. In light of this information, the justices declared that the pace of examining the asylum applications is unacceptable.⁴³ That month, the Court issued an order nisi, obligating the State to file a response, in which it would explain why it will not develop guidelines for examining asylum applications without delay, or make a determination on asylum applications without

³⁷ The Law Office of Tomer Varsha and others vs. the Prime Minister and others 7552/17.

³⁸ The first petition was one filed by the HRM in October 2017 on behalf of two Darfuri asylum seekers whose asylum applications have gone without a determination for years (HCJ 7982/17 Anwar Suleiman Arabab Ismail vs. The Minister of Interior) and the second one is a petition filed by 24 asylum seekers from the Nuba Mountains and Blue Nile regions in February 2018 (HCJ 1031/18 Moshir vs. Minister of Interior).

³⁹ The status was granted to asylum seekers identified by the Ministry of Interior as originating from Darfur, the Nuba Mountains and the Blue Nile Region, and were over the age of 41.

⁴⁰ See on the website of the Immigration Authority:

https://www.gov.il/he/Departments/news/darfur_permits_announcement

⁴¹ HCJ 4630/17 Adam Gobara Tagal and others vs. The Minister of Interior. Decision issued on October 29, 2018.

⁴² Ibid., decision issued on December 16, 2018.

⁴³ Ibid., as part of the hearing held on March 18, 2019, the State Attorney's Office informed the court that three of the five members of the "special task force" established for examining the asylum applications of Darfuris at the RSD Unit quit, and that in the hearing of the Advisory Committee (which meets once a month), only ten asylum applications will be examined, while there are about 3,800 pending asylum applications filed by Darfuris.

guidelines, or alternatively justify why it will not grant temporarily residency to all Darfuri asylum seekers until a determination is made on their asylum applications.⁴⁴

In July 2019, instead of providing a response affidavit, the State informed the Court that due to the latest developments in the political situation on the ground in Sudan, and due to the unstable security situation there, it cannot develop guidelines for making determinations on the asylum applications of Sudanese nationals, and it also cannot issue decisions on the individual asylum claims of Sudanese residing in Israel.⁴⁵ In addition, the State declared that the minister of interior intends to publish within a month a list of criteria according to which B1 visas (work permits) will be granted to additional group of 300 asylum seekers from the Darfur and Nuba Mountains regions, a list that indeed was published.⁴⁶

On September 1, 2020, the State filed its response to the Court. This time, the State claimed that it cannot make a determination on the applications due to the unstable political situation in Sudan, and due to the diplomatic sensitivity, that has emerged between Israel and Sudan. The State mentioned in its response that in recent months, an escalation of violence occurred in Darfur and other regions, particularly in eastern Sudan, and that the militias responsible for some of the violent attacks in recent weeks on protesters in Sudan are comprised of men who were part of the Janjaweed who carried out the genocide in Darfur. The State also detained that some of the attacks took place in displacement camps, leading many to flee to Chad. Despite this, the State used the excuse of the covert diplomatic relations between Israel and Sudan, claiming that now is not the appropriate time to make a determination on the asylum requests. In the hearing held on the matter on September 21, 2020, the state asked the HCJ for additional three months delay in order to prepare and provide an update regarding the developments of the relations between the two countries. The state's representative admitted that the security situation in Sudan deteriorated. She also admitted that during the two years that passed since the state committed to court to check asylum requests of asylum seekers from the Darfur region, the RSD unit deliberated only six requests and made no decision on any of them. Despite that, the Court granted the State another three months delay and a hearing is scheduled for December 9, 2020.

⁴⁴ Ibid., March 19, 2019.

⁴⁵ Ibid., July 9, 2019.

⁴⁶ The Population Authority, [Foreigners' Data in Israel - Summary for 2019](#), (Hebrew), March 2020, p. 9.

Anwar Suleiman - Awaiting a Decision for 14 Years

Anwar arrived in Israel in November 2008 and was held in detention for five months in Saharonim Prison, although he informed the Border Control Officers and the Detention Review Tribunal adjudicators that he is a survivor of the genocide in Darfur and is seeking political asylum in Israel. In May 2009, he turned to the Ministry of Interior to file an asylum claim, but the Ministry of Interior refused to accept his application, arguing that



Sudanese and Eritrean nationals enjoy group protection anyway, and therefore he cannot and has no reason to apply for asylum. In November 2013, after the policies of the Ministry of Interior changed and Eritrean and Sudanese nationals were allowed to file asylum applications, Anwar did so. In 2014, while he was detained at the Holot Facility, Anwar underwent an asylum interview, and despite the vow of the Immigration Authority to prioritize the asylum applications filed by those held in Holot, as of the writing of this report, six years after submitting it, his request is still pending.

A petition filed on his behalf by the HRM is awaiting a determination. Throughout his years of residing in Israel, Anwar has been obligated to report every few months to the offices of the Immigration Authority to renew his staying permit (for many years, the renewal had to be requested every two months, later every six months, and starting in 2019, once a year). For years, obtaining the permit renewal entailed standing in line for many hours and even days, trying to obtain documents that are not always available, at times enduring humiliation and abuse. For example, in April 25, 2018, when he arrived at the Bnei Brak office of the Immigration Authority, Anwar was told by the Border Control Officer that the rental agreement for an apartment he presented was "not good" and he was told to return again, with a new contract. The Officer refused to answer Anwar's question who attempted to inquire what is wrong with the contract. Eventually, the Officer relented and renewed Anwar's visa, but for only a month. At the end of the month, Anwar had to report to the same office with the contract, and since he kept residing in the same apartment, he had no choice but presenting the same contract and hope that this time he will receive a permit for six months, to which he was entitled.

The Abuse of the Asylum System by Scammers and Human Traffickers

The delay in examining asylum applications had widespread ramifications on the entire asylum system: according to data of the Immigration Authority, between 2016 and 2019, citizens of the Ukraine filed 16,989 asylum applications; 5,440 asylum applications were filed by Georgian citizens; and 8,279 were filed by citizens of Russia.⁴⁷ The common understanding, shared by human rights NGOs and Immigration Authority personnel is that most of the asylum seekers from those countries did not arrive in Israel because they have been persecuted in their countries. They arrived in Israel owing to economic motivations, following advertisements by Israeli middlemen who promised them an easy and even legal way to earn a living, while relying on the failing asylum system, which will take years to examine and reject the asylum claims of these individuals, and while the request is being examined, provide them with permits that will allow them to work in Israel without the fear of fines or detention. Thus, in a response to the Jerusalem Post, the Spokesperson of the Immigration Authority, Sabine Haddad, explained that the abridged process instituted to examine the asylum applications of Ukrainian and Georgian nationals was intended to reject these applications as soon as possible, since those are merit-less requests.⁴⁸ Representatives of the HRM addressed the Israeli Police on this matter back in 2016, and sent a detailed report to decision-makers on this matter,⁴⁹ but the phenomenon persists until today. It is worth mentioning that in 2018, the Immigration Authority raised the alarm about a sharp rise in the number of asylum applications filed by Russian citizens. The Director of the Enforcement and Foreigners Division at the Immigration Authority, Yossi Edelstein, told Haaretz daily: “if we see that this gets worse, we will examine applying the abbreviated procedure as we've done with the Ukrainians and Georgians. We are still not there.”⁵⁰

In October 2019, to combat the phenomenon of abuse of the delays in Israel's asylum system for the purposes of illegal employment and human trafficking, the Immigration Authority updated the regulation for handling asylum applications. According to the new regulation, once a person files an asylum claim in

⁴⁷ Ibid.

⁴⁸ Yona Jermy Bob, African migrants to Israel: [Detain, deport or ignore their existence?](#) July 19th, 2019

⁴⁹ HRM, [“Through Hidden Corridors” New trends in human trafficking which exploit the asylum system in Israel](#), September 2017.

⁵⁰ Lee Yaron, [Israel Sees Drastic Rise in Asylum Requests From Russians](#), *Haaretz*, August 21, 2018.

Israel, he is banned from working for six months, and only if after the six months elapse and his asylum application is still pending, “enforcement measures will not be taken due to his employment.”⁵¹ This is contrary to the prior regulation, which allowed for the employment of an individual immediately upon applying for asylum. However, it appears that the change in policy has not achieved the desired result, as far as the Immigration Authority is concerned. In February 2020, speaking to IDF Radio (Galatz) the Director of the Immigration Authority, Prof. Shlomo Mor Yossef, in response to a question raised by an Eritrean asylum seeker about the years-long delay in examining his asylum application, stated that the Authority is overburdened with specious requests. Mor Yossef complained about this state of affairs, saying “the asylum system has become a way to get jobs” for citizens of the Ukraine, Sri Lanka and other countries.⁵²

The Pace of Examining Asylum Applications Around the World

As opposed to Israel, where the work of the RSD Unit is regulated only through internal guidelines of the Immigration Authority, in many countries around the world, the timetable for handling asylum applications and deadline are stipulated in law. Thus, for example, a directive of the EU determines that asylum applications must be examined within six months, with a possibility for an extension of nine additional months in particularly complex cases. In any case, all asylum applications must be examined within 21 months total. In France,⁵³ Belgium⁵⁴ and Finland,⁵⁵ this limitation is enshrined in law. In Italy the asylum interview must be carried out within 30 days since the filing of the asylum application, and authorities must make a determination with regards to the request in the span of the next three work days.⁵⁶ In cases when additional examination is needed, an extension of up to 18 months.⁵⁷

⁵¹ [The Regulation for Handling Applications for Political Asylum](#), updated on October 10, 2019.

⁵² “Ihye Beseder” program (“It will be okay”), IDF Radio, February 4, 2020.

⁵³ Article R. 723-2 of CESEDA refers to the paragraphs 3 and 4 of Article 31 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

⁵⁴ Article 57/6, Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens.

⁵⁵ Section 98a of the Aliens Act (301/2004, as amended).

⁵⁶ Article 4 Legislative Decree no. 25/2008, as amended by LD 220/2017.

⁵⁷ Article 27 Legislative Decree no. 25/2008.

In many countries that are not EU members, the duration of examining asylum applications is also capped. For example, in Switzerland, asylum applications must be examined within 140 days (except in cases in which extensive investigation is required).⁵⁸ In the United States, the Immigration and Nationality Act determines that asylum applications must be examined within six months of the filing of an asylum request, except in extraordinary cases.⁵⁹ In Canada, as of January 2020, the maximum waiting time for a determination on an application for political asylum is 22 months.⁶⁰ Across these countries, the deadlines for handling applications are set in law or regulations, and are known ahead of time, transparent and clear to those whose lives they impact. In addition, in some of the country, asylum seekers are eligible for basic medical and mental health care during the waiting period, and particularly survivors of torture and additional vulnerable group. Financial and social assistance is also provided in some countries to those who cannot support themselves. Thus, for example, the European Union directive obligates all EU member states to provide asylum seekers with minimal conditions that include vital medical and mental health support, as well as social assistance to ensure a dignified standard of living.⁶¹

Therefore, the way the Israeli asylum system is run is extraordinary, and does not meet existing standards even in countries that apply strict immigration policies (such as Italy, Switzerland and the United States). The absence of legislation on the matter, and the fact that even internal Immigration Authority regulation do not set deadlines for making determinations on asylum applications - create the conditions that do not allow asylum seekers to demand that their applications be reviewed within a certain time frame, and all they are left to remain suspended in an open-ended waiting period. Even those among the asylum seekers who could not tolerate the wait any longer and could afford to hire lawyers, filed petitions aiming to force the State to issue a decision on their cases, have still not received the legal remedy they had requested.

Life in Israel with a Pending Asylum Application

Asylum seekers whose applications have not been reviewed yet usually reside in Israel legally, most of them with 2A5 type permits (a conditional release visas), which allow them to work in Israel. At the same

⁵⁸ Website of the State Secretariat for Migration, ‘[La procédure d’ asile](#)’ .

⁵⁹ 8 U.S.C. § 1158(d)(5)(A)(iii).

⁶⁰ Immigration and Refugee Board of Canada Information Sheets, available at: <https://irb-cisr.gc.ca/en/information-sheets/Pages/refugee-protection.aspx>

⁶¹ See the Directive of the European Parliament EU/2013/33 dated June 26, 2013. Also see the Federal Act on Asylum in Switzerland, which determines that those who applied for asylum have the right to housing, basic health care, social rights and emergency assistance if they cannot support themselves.

time, these visas are not official work permits, but the asylum seekers and their employees do not face the risk of arrest or fines, in line with the State's commitment to the HCJ not to enforce the prohibition on their employment.⁶² This policy is intended to deter Israeli employers from hiring asylum seekers, as their 2A5 permits states "This temporary permit is not a work permit". The 2A5 permits place restrictions on those holding them in various spheres, and with time, the restrictions became more encompassing: 2A5 permit holders are not insured with the national insurance, and their employers are obligated to provide them with private insurance, which is significantly more expensive, and provides with extremely limited coverage; those who are not employed, at times exactly due to their poor health, do not have health insurance, and receive medical care at hospitals if their lives are in danger. When asylum seekers lose their jobs, they are not entitled to unemployment benefits; they are also not entitled to paid sick leave, and all the other social rights to which residents of Israel are entitled;⁶³ they are prevented from obtaining driver's licenses, registering a business, and even getting a public transportation card that provides discounts; the holders of these permits are not entitled to income tax breaks; and the State places onerous taxes on them - starting from the Deposit Law that deprived asylum seekers of 20 percent of their net pay (until being partially voided by the HCJ in April 2020),⁶⁴ and the Foreign Workers Tax, amounting to 20 percent more of their salaries, levied on their employers, which makes their employment much less profitable.⁶⁵

Women who reside in Israel with a pending asylum application find themselves in an even tougher position than men. According to Immigration Authority data, in 2014, Israel was home to over 7,000 female asylum seekers, about 6,000 of them from Eritrea. According to data obtained by the NGO ASSAF (Aid Organization for Refugees and Asylum Seekers in Israel) from the Immigration Authority in November 2015, 3,340 female asylum seekers are registered as mothers, and it is unclear how many of them are single mothers. Those among them who are single parents, are not defined as such under the Law for Assistance of Families since they are not considered residents of Israel, and hence authorities do not monitor or document their cases. They are denied the assistance provided by the National Insurance and welfare services, and are not entitled to tax breaks and other financial benefits that Israeli single parents enjoy.

⁶² HCJ 6312/10 Kav LaOved and others vs. the Government of Israel. Decision issued on January 16, 2011.

⁶³ See more under "[Social Services](#)" on ASSAF's website.

⁶⁴ Lee Yaron, "[Israel's Top Court Strikes Down Law Requiring Asylum Seekers to Deposit 20% of Salaries,](#)" *Haaretz*, April 23, 2020.

⁶⁵ Rina Rosenberg Kendel, "[The High Court: Employers of Eritreans and Sudanese Will Be Forced to Pay a Levy,](#)" *The Marker*, September 13, 2017 (Hebrew).

Research conducted by the NGO ASSAF showed that 69% of female asylum seekers interviewed by them reported to suffering from medical problems. 52% worked in a steady job, but out of those women, only 13% enjoyed health insurance, as the law obligates. 47% of the women reported that although they suffer from a medical condition that impairs their daily functioning, they are not turning for medical help.⁶⁶ The vast majority of the female asylum seekers in Israel experienced severe gender-based trauma in their countries of origin or during the treacherous path to Israel. Denying social benefits to these women prevents them from addressing that trauma, as well as the health issues that emerged due to torture they endured en route to Israel. Female asylum seekers are further discriminated against compared to Israeli women, since they are not entitled to the tax breaks women enjoy, and they are also not entitled to tax breaks for having underage children under their care.

Unlike asylum seekers awaiting a determination on their application, those who are recognized as refugees or granted this status based on humanitarian grounds and hold an A5 permit, which constitutes temporary residency, are granted rights similar to those of Israeli citizens (except the right to vote and be elected in general Israeli elections). Individuals recognized as refugees are also entitled to bring to Israel their first-degree relatives, if they remained behind in the country of origin.⁶⁷ The purposeful delay of the Immigration Authority in examining well-founded asylum applications essentially denies all of these rights to those who would have been granted refugee status in Israel, had their application been examined.

Summary and Recommendations

The Immigration Authority has consistently placed the examination of asylum applications of Eritreans, Sudanese and Congolese citizens at the bottom of the priority list. According to the Authority, reviewing those asylum applications is not “urgent”, since Israel applies a non-removal policy with regards to these nationals anyway, and therefore, they cannot be deported from Israel at the moment. Back in 2018, this twisted prioritization was explained to the Israeli Comptroller by the head of the Directorate of Enforcement and Foreigners at the Immigration Authority:

“The head of the Enforcement Directorate informed the Comptroller's Office during the review period that the burden of work placed on the RSD Unit does not allow it to examine asylum applications within a

⁶⁶ Adi Dror Avrahami, [“Abandoned: Single Parent Female Asylum Seekers in Israel,”](#) ASSAF – Aid Organization for Refugees and Asylum Seekers in Israel, March 2016.

⁶⁷ The regulation concerning handling of political asylum applications (5.2.0012), articles 11-12.

*reasonable time period, and therefore, the Unit must set priorities with regards to asylum application filed by foreigners from different countries. The Enforcement Directorate head added that it was decided to prioritize handling the requests filed by citizens of Georgia and the Ukraine, since these are citizens who can be returned [deported] to their countries of origin; on the other hand, even if the asylum application of a foreigner who cannot be removed is rejected, such as a subject of Eritrea, this will not bring about his removal, for the time being, and he will likely continue to reside in Israel.”*⁶⁸

This approach denies the grave cost stemming from this foot-dragging, and the incentives it creates to the emergence of phenomena such as human trafficking and a systematic exploitation of migrants in irregular jobs, as detailed in this report. It appears that strong asylum cases, ones that employees of the RSD Unit struggle to dismiss, remain gathering dust on the shelves, hoping that the applicants will leave Israel on their own, and absolve the State of the need to truly examine their asylum claims. This explains how about two thirds of all Eritrean and Sudanese asylum seekers, and nearly all Congolese asylum seekers, have been awaiting determination on their asylum cases for years, with no end in sight.

The goal of this report is to expose the causes for this state of the Israeli asylum system, as well the hidden consequences of this policy. We hope that policy makers will realize that the faulty prioritization guiding the work of the RSD Unit must be completely overhauled. All applications of Eritrean, Sudanese and Congolese asylum seekers must be immediately fairly adjudicated and decisions must be issued, ending the purposeful ambiguity in this matter. Until determinations are made on all cases, asylum seekers awaiting decisions on their applications must be granted legal status that will allow them to legally work, as well as social rights, to reduce to the greatest extent possible the harm caused to them by the failings of Israel's asylum system.

⁶⁸ State Comptroller's report, [The Handling of Political Asylum Seekers in Israel](#), report no. 1419, issued on May 8, 2018, p. 1443. (Hebrew)