



# DETENTION OF MIGRANTS AND ASYLUM SEEKERS IN ISRAEL

ANNUAL MONITORING REPORT 2020

*Hotline for Refugees and Migrants*



# **Detention of Migrants and Asylum Seekers in Israel**

**Annual Monitoring Report  
2020**

**June 2021**

Research and writing: Sigal Rozen and Shira Abbo

Translation: Aviva Shemesh

Cover photo: Avshalom Shoshani, courtesy of Ma'ariv

Graphic Design: Hamutal Sadan

Editing: Ayelet Oz

June 2021

We would like to thank Amitai Netzer-Zernik, Amir Livneh Bar-On, Gilad Keinan, Rotem Lammfromm, Hagar Shilo and Shai Efrati for their dedicated volunteering work which allowed us to process thousands of court transcripts of hearings in the Detention Review Tribunal and extract valuable information.

### **About the Hotline for Refugees and Migrants (HRM)**

The Hotline for Refugees and Migrants is a non-partisan and non-profit organization that aims to protect and promote the human rights of refugees, migrants and human trafficking victims in Israel. The organization provides information and client services including, counseling and legal representation, detention monitoring, and leading public policy initiatives.

18 Hatsfira st., Tel Aviv - Jaffa 6515417, Israel

E: [info@hotline.org.il](mailto:info@hotline.org.il)

T: +972-(0)3-5602530

W: [www.hotline.org.il](http://www.hotline.org.il)



Published with the generous support of the Heinrich Böll Stiftung

## Table of Contents

<b>Introduction</b> .....	5
Methodology.....	6
<b>Background</b> .....	7
The identity of undocumented migrants in designated detention facilities.....	7
The number of detainees.....	9
The number of deportees .....	9
Detention facilities for undocumented migrants .....	12
<b>Violation of the Rights of Detainees during the Corona Crisis</b> .....	15
Overcrowded facilities .....	15
Delaying the deportation of migrants and their prolonged detention due to the Corona epidemic .....	15
Difficulties in releasing detainees that cannot be deported due to the corona crisis ..	21
Violation of the right to fair trial and the right to representation during the Corona crisis .....	25
<b>Prolonged Detention of Migrants and Asylum Seekers</b> .....	27
<b>Detention Review Tribunal for Undocumented Migrants</b> .....	32
Insufficient vigilance in protecting the rights of mentally-challenged migrants.....	32
Inattentiveness to suspected cases of human trafficking .....	32
Flawed translation in hearings for detained migrants.....	35
<b>Women and Children in Detention Facilities</b> .....	36
<b>Individuals Denied Entry to Israel</b> .....	40
Denial of access to the asylum system to individuals denied entry to Israel .....	40
<b>Summary and Recommendations</b> .....	41

## Abbreviations

**HCJ** - High Court of Justice

**The Tribunal** - The Detention Review Tribunal of Undocumented Migrants

**HRM** - The Hotline for Refugees and Migrants

**The Immigration Authority/ The Authority** – Population and Immigration Authority

**IPS** - Israeli Prison Services

## Introduction

The Hotline for Refugees and Migrants (HRM), publishes its detention monitoring report for the sixth year in a row. The report monitors the detention conditions in the facilities designated for undocumented migrants and asylum seekers held in detention (administrative detention). As in previous years, we will clarify in this report the identity of the detainees held in the various facilities, some have been detained for years, the number of detainees, and the laws that justify holding them in detention.

As observed in previous years, 2020 as well saw the prison population decreasing, even more than in the past. For the most part of the year, the number of detained migrants and asylum seekers was only a few dozens.

The corona epidemic that broke out at the beginning of the year brought the arrival of migrants to Israel to almost a complete cessation, therefore reducing the population of undocumented migrants in Israel. The fact that from mid-March 2020 until the end of the year, a significant part of the immigration unit of the Immigration Authority was recruited to enforce the procedures of the Ministry of Health, also greatly reduced the number of detained migrants.

Due to the small number of enforcement actions and the small number of detainees, the trends identified by HRM in 2020 have changed. Naturally, special attention was paid in this report to violations of detainees' rights due to the Corona epidemic: the number of detainees in detention facilities violated the number of people permitted according to the density limit set by the Ministry of Health; prolonged detention of migrants who could not be deported in the absence of flights to their country of origin; difficulties arising from movement restrictions and closures affected the release of detainees that cannot be deported; and violation of the right to fair proceeding in court due to the use of online conferencing during the closure period. We did focus this year on failures we had already pointed out in previous years: the causes of the incarceration of migrants for years without reason and purpose; the failure to identify victims of human trafficking and mentally impaired detainees held by the Tribunal; and violation of the rights of those refused entry into the country due to detainees' density in the Yahalom facility and the difficulties in submitting asylum applications at the facility. In addition, the report documents the few cases of families and their children, who were detained in the beginning of the year, before the breakout of the epidemic. The report describes selected challenges and the main complaints of the detainees, as presented to us.

As in every year, we reiterate our main recommendation to formulate a policy stipulating that detention is the last resort to ensure that undocumented migrants leave Israel. Additionally, as the chapters of the report show –

- The basic rights of detained migrants must also be safeguarded and protected even in health or other emergencies. In particular, a situation in which detainees are

"forgotten in prison" only due to the absence of available flights for their removal, should be prevented;

- Efforts should be made to reduce the prolonged detention of migrants;
- It must be ensured that minors are not detained;
- It must be ensured that migrants who may be facing threats to their lives in their country of origin, are not deported without being given the opportunity to seek asylum in Israel;
- Effective mechanisms for identifying and locating victims of human trafficking and slavery must be established and given to the authorities;
- The responsibility for the Yahalom facility should be transferred from the Immigration Authority to the IPS.

### *Methodology*

The information in this report is the integration of testimonies by detainees (12), response to freedom of information requests (7), processed protocols (2,302) of the Tribunal hearings, inquiries to government ministries submitted by HRM and their respective responses, as well as documents submitted to Knesset committees.

## Background

The status of immigrants in Israel is determined by four laws: the Law of Return<sup>1</sup>, the Citizenship Law<sup>2</sup>, the Entry into Israel Law<sup>3</sup>, and the various amendments to the Anti Infiltration Law<sup>4</sup>.

The Law of Return applies to any Jew who is a resident of a country other than Israel who wishes to immigrate to Israel, as well as his children and grandchildren. These immigrants are entitled to receive Israeli citizenship. According to the Citizenship Law, a person can obtain the status of an Israeli citizen under the Law of Return through family reunification proceedings or in cases of exceptional adoption proceedings. The status of other immigrants in Israel is determined by the Entry into Israel Law or by the Anti Infiltration Law. The State of Israel does not consider itself a destination country for immigration, and the government has stated many times that the only way to immigrate to Israel is through the Law of Return. As a result, except in humanitarian cases or family reunification proceedings, immigrants who are not eligible to a legal status under the Law of Return can only receive legal status for short periods of time. Immigrants who entered Israel as tourists or as migrant workers and overstay the period of residency permitted by their visa, are arrested under the Entry to Israel Law. Since June 2012, migrants and asylum seekers who entered Israel in an unregulated manner while crossing borders, have been arrested and imprisoned under the Anti Infiltration Law and its amendments.

### *The identity of undocumented migrants in designated detention facilities*

According to the definitions of the Immigration Authority, there are four groups of migrants in Israel, some of whom may occasionally find themselves in detention facilities for undocumented migrants<sup>5</sup>:

- **"Tourists"**: 48,600 migrants arrived in Israel through Ben Gurion Airport as tourists in 2020 and remained even after their tourist visa expired (compared to 58,200 in 2019). 77% of them arrived from the former Soviet Union<sup>6</sup>. The prevailing assumption is that most of them are relatives of immigrants who already live in Israel and are entitled to citizenship under the Law of Return.

---

<sup>1</sup> [The Law of Return](#), 1950.

<sup>2</sup> [The Nationality Law](#), 1952.

<sup>3</sup> [The Entry into Israel Law](#), 1952.

<sup>4</sup> [Prevention of Infiltration Law](#), (amended in 2012).

<sup>5</sup> Population, Immigration and Borders Authority, "Data on Foreigners in Israel: [Summary of 2020](#)", March 2021, p. 6 (Hebrew).

<sup>6</sup> *Ibid*, p. 26

- **"Migrant Workers"**: In 2020, there were 98,188 migrants<sup>7</sup> in Israel with work visas in the fields of care-giving, agriculture and construction, as well as specialist workers (compared with 101,992 in 2019). That year there were also 13,251 migrant workers who lost their work visas. In 2020, some 55,705 individuals from more than ten different countries were working in the care-giving sector: 36% from the Philippines, 24% from India and 13% from Moldova. Others came from Uzbekistan, Sri Lanka, Nepal, Ukraine, Georgia, Romania and in smaller numbers from other countries<sup>8</sup>. Out of the total number of migrant care-givers, 46,675 (84%) are women<sup>9</sup>. In addition, there were 2,283 care-givers who lost their visas but remained in Israel illegally. In the agriculture industry, 22,289 workers with visas were registered, 654 of them are women. Almost all of migrant workers in the agriculture industry are citizens of Thailand, with whom the State of Israel signed a bilateral agreement<sup>10</sup>. Some 1,091 agricultural workers had their visas expired and remained in Israel illegally. In the construction industry, there were 14,877 workers with visas, all of them men. More than half of them, 7,617 individuals, are Chinese citizens, 5,088 Moldovans, 1,057 Ukrainians and 1,037 Turkish citizens. In addition to them, there were 862 construction workers who lost their visas. All 98,188 migrants arrived in Israel legally, some according to bilateral agreements between Israel and their countries of origin. These immigrants are permitted to work in Israel for a period of five years and three months, but sometimes they lose their legal status even earlier when they choose to leave their employers for various reasons, including exploitation and employment in difficult conditions, or when their employers decide to dismiss them. Many women lose their legal status when they become pregnant.
- **"Infiltrators"**: At the end of 2020, there were 30,511 migrants and asylum seekers in Israel who entered Israel from Egypt during the last decade, while not passing through an official border crossing. These migrants and asylum seekers are called "infiltrators" by the authorities, even though international law allows a persecuted persons to cross borders without a permit in order to save their lives. Some 91% of them are citizens of Eritrea and Sudan, of which 63% have applied for political asylum<sup>11</sup>.
- **"Asylum seekers"**: In 2020, 1,909 individuals applied for political asylum in Israel<sup>12</sup> (compared with 9,842 people who applied for asylum in 2019). The reason for the drastic decrease in the number of asylum seekers is also due to the corona pandemic,

---

<sup>7</sup> Ibid, p. 13. The table inadvertently indicates the number 188,98, but this is a technical display error. Calculating the number of workers in the various industries shows that the total number of migrant workers in 2020 was 98,188 which can be found also on page 14 of the same edition.

<sup>8</sup> Ibid, p. 22.

<sup>9</sup> Ibid, p. 25.

<sup>10</sup> Ibid, p. 24.

<sup>11</sup> HIAS, "[0.06% - The Numbers Speak for Themselves](#)" - Processing Asylum Applications in Israel, August 2020.

<sup>12</sup> Population, Immigration and Borders Authority, "Data on Foreigners in Israel: [Summary of 2020](#)", March 2021, p. 12 (Hebrew).

to closures and to the transfer of staff from the Immigration Authority to the health enforcement unit in the Ministry of Health. Despite the difficulties, 325 citizens of Russia, 217 citizens of Ukraine and 165 citizens of Belarus managed in 2020 to apply for asylum as well as smaller numbers of citizens of other countries. A total of 34,624 people applied for asylum in 2020, and their faith has not yet been decided<sup>13</sup>.

### *The number of detainees*

The trend of reduced number of detainees that started in 2018, culminated in 2020 with the closure of the Holot facility and the abolition of the deportation program to third countries, following the HCJ 1892/14 ruling, which set timelines to reduce the density of detainees in detention facilities<sup>14</sup>. While in 2015, there were some 5,000 migrants and asylum seekers, held in administrative detention, in 2020 their number decreased at any given time to only a few dozen migrants<sup>15</sup>.

The minutes of the Tribunal hearings show that only 23% of the detainees were held in custody for four days or more, and were therefore brought before the Tribunal judges. If indeed all the decisions made by the judges were uploaded to the site as required, it means that the deportation proceedings have improved significantly, and most of the migrants left the country a few days after their detention, even before they were brought before the Tribunal. While in 2019 more than 5,000 transcripts pertaining to more than 3,000 detainees were found in the Tribunal's decision database, in 2020 only 2,302 transcripts were found in the database pertaining to 869 detainees. In 2020, as in recent years, the largest group among the detainees was from Ukraine (232), followed by Georgia (106), Russia (80), Thailand (63) and Eritrea (57). More than half of the court hearings (1,504) were conducted by Judge Raja Marzouk, while 683 hearings were conducted by Judge Liron Crispin-Boker, who resigned from her position as Judge during the year. In addition, in 2020 the judges in the Tribunal were Yoav Bar-Lev (103 hearings), Marat Dorfman (11 hearings) and Dvir Peleg (1 hearing).

### *The number of deportees*

---

<sup>13</sup> HIAS, "[0.06% - The Numbers Speak for Themselves](#)" - Processing Asylum Applications in Israel, August 2020.

<sup>14</sup> Ibid

<sup>15</sup> HRM's estimate in the absence of available data from the authorities.

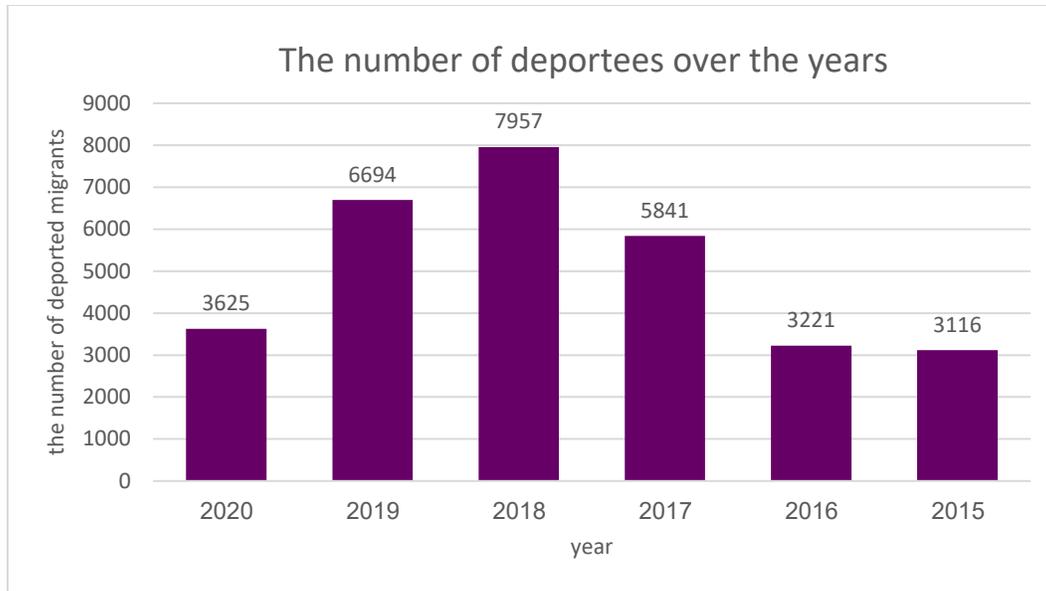


Figure 1 – The number of deported migrants over the years

Following the reduced enforcement activities, there was also a large decrease in the number of migrants that were arrested and deported from the country - 3,625 people - about half of the number of migrants deported in the previous year<sup>16</sup>. During the year, 783 migrants who entered Israel with tourist visas were deported, 121 migrants who arrived with work visas and 2,721 (75%) who were defined by the Immigration Authority as "other migrants", a category that according to the Authority mainly includes "type 2A5 license holders"<sup>17</sup>. It can be assumed that the definition's wording was incorrect, since if those people had held a type 2A5 license, they would not have been arrested and deported from the country. Such visas are given to asylum seekers who cannot be deported by law, such as Eritrean and Sudanese nationals, as well as asylum seekers from other countries, most often from the former Soviet Union, who very often lose their visa after a superficial review that results in denying them a refugee status. Therefore, since the Authority does not arrest nor deport the citizens of Eritrea and Sudan, who reside in Israel under a non-removal policy, it can be concluded that 75% of the deportees are citizens of other countries who came to Israel as tourists, sought asylum, and their application was denied. The data thus show, as in previous years, that in recent years most of the enforcement activity included the arrest and deportation of tourists, usually from the former Soviet Union, who come to Israel to seek asylum. Further data held by the Immigration Authority also show that throughout the year 2020, migrants were deported from the country, despite the corona epidemic, the closures, the transfer of staff from the Authority to the Ministry of Health and the cessation of Ben Gurion Airport's activities. In the first three months of the year, some 716, 558, and 544 were deported

<sup>16</sup> Population, Immigration and Borders Authority, "Data on Foreigners in Israel: [Summary of 2019](#)", March 2020, (Hebrew).

<sup>17</sup> Population, Immigration and Borders Authority, "Data on Foreigners in Israel: [Summary of 2020](#)", March 2021, p. 27 (Hebrew).

respectively. With the outbreak of the epidemic in Israel and during the closures, 136 to 181 migrants were deported every month in April to July, about 200 people were deported every month from August to November, and in December 2020 there was an increase in the number of deportees – 331 individuals<sup>18</sup>. The deportation activity never ceased, and May 2020 saw the smallest number of deported migrants, of which 136 were deported from the country.

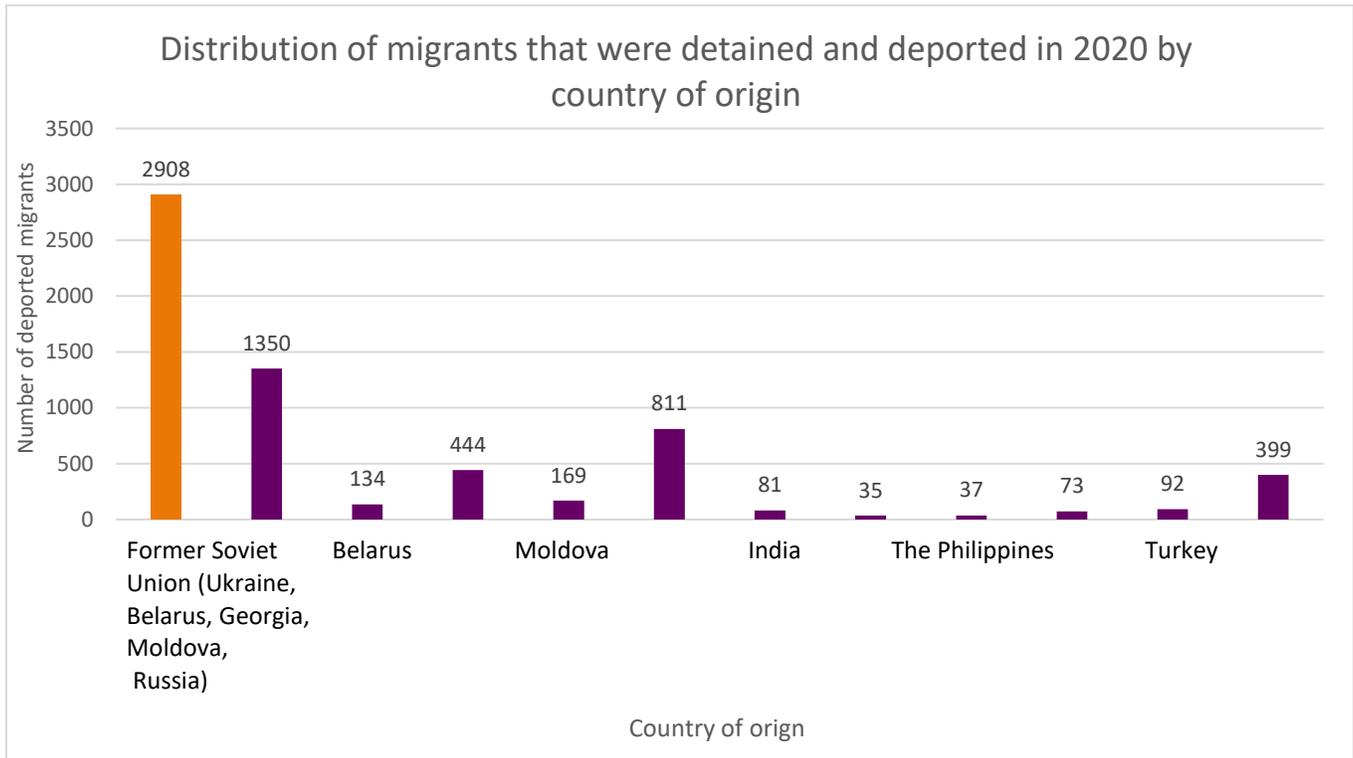


Figure 2 – Distribution of detained migrants that were deported in 2020 by country of origin

As in 2015-2019, in 2020 the majority of deportees were from Ukraine (1,350), but this year the number of deportees from Russia exceeded the number of deportees from Georgia, with 811 Russian compared to 444 Georgian deportees<sup>19</sup>. Our estimate is that, many of these migrants come to Israel with the encouragement of organized networks that aiming at bringing workers to Israel while avoiding regulatory mechanisms and employment permit quotas. Such networks encourage employees to apply for asylum, which will allow them to stay in Israel and work as long as their application is being processed. Data obtained from the Immigration Authority indeed shows that many of them succeed in submitting an application for asylum. The high numbers of deportees indicate that no sufficient and systematic inquiry was made to examine whether among deportees there were victims of human trafficking and detention under conditions of

<sup>18</sup> Ibid

<sup>19</sup> Ibid, chart 11, p. 28.

slavery. Such an inquiry, had it taken place before the migrants were deported, would have allowed the Israeli police to recognize them as victims<sup>20</sup>.

### *Detention facilities for undocumented migrants*

At the beginning of 2020, there were three detention facilities in Israel for undocumented migrants and asylum seekers: the Saharonim facility located on the border with Egypt, the Givon facility in Ramla, and the Yahalom facility at Ben Gurion Airport.

### **Saharonim detention facility**

The Saharonim facility is located in the Negev, near Nitzana, near the Egyptian border, and detains only men. Saharonim was built in 2007 and is intended for the incarceration of undocumented asylum seekers who entered Israel. On March 11, 2020, the Saharonim facility (where asylum seekers and immigrants were held in custody) was evacuated with the intention to transform it into an isolation facility for detainees and prisoners suspected of contracting the Corona virus. The detainees evacuated from Saharonim were transferred to the Givon detention facility.

### **Givon detention facility**

The Givon facility opened in 2004 and is located in the city of Ramla. It is part of a large complex of detention facilities, which includes Ayalon Prison, Ma'asiyahu, Neve Tirtza and Nitzan Prison. Prisoners of the Givon facility include, Israelis convicted of criminal offenses punishable by up to five years imprisonment, as well as clandestine undocumented migrants. The two groups are held in separate wings. Detainees of the Givon facility, include also women, mainly migrant workers, who are held in a separate wing.

The allowed number of detainees in the entire facility is 280 people, while in the wings intended for foreigners the allowed number is 128 people, 69 are detained in the men's wing and 59 in the women's wing<sup>21</sup>.

According to information HRM obtained from detainees at the Givon facility, after the detainees were transferred from Saharonim in March 2020 (with the outbreak of the corona epidemic), the facility remained as dense as eight detainees in each cell, which increased the risk of infection. This probably happened due to the policy of fully populated cells, aiming at reducing the number of populated cells in the wing.

---

<sup>20</sup> The Hotline for Refugees and Migrants, "[Through Hidden Corridors](#)" – new trends in human trafficking which exploit the asylum system in Israel, September 2017.

<sup>21</sup> Based on an email from Dr. Anat Horovitz, the Public Defense at the Ministry of Justice, to the Hotline for Refugees and Migrants, May 21, 2020.

This year, as every year since 2016, HRM received complaints about flea infestation at the Givon detention facility, which caused a great deal of suffering, especially to a baby who was held at the facility in February 2020 for 14 days.

### **Yahalom detention facility**

The Yahalom detention facility, located at Ben Gurion Airport, is the only detention facility managed by the Population and Immigration Authority and not by the IPS. The facility is intended for the incarceration of those who "were refuse entry", migrants whom the State of Israel seeks to prevent from entering Israel due to security concerns or fears that they would settle in Israel. The detention of those who were denied entry in the Yahalom facility is intended to last only a few days, until their deportation to their country of origin is possible. However, HRM representatives documented many cases of undocumented migrants, mainly families with children, who were detained while staying in Israel, transferred to the Yahalom facility and held there for weeks and even months before their deportation. It should be noted that the incarceration period in this facility is increasingly shortening. To the best of our knowledge, in 2020 no families with children were held there for long periods of time. However, the living conditions, do not meet the legal requirements, even for short periods, due to the high density in about half of the cells, and because there are no regular times for walking in the yard. HRM representatives are not allowed to enter the Yahalom facility, with the exception of lawyers. Therefore, our knowledge of the conditions at the facility relies on conversations with detainees and on the information received from the Immigration Authority in response to requests under the freedom of information law.

According to information provided by the Immigration Authority in 2019 in response to a request under the freedom of information law, the facility currently has nine cells, with a total of 52 beds. The size of the cells ranges from 9.98 square meters for a room with four beds, to 25.52 square meters for a room with nine beds and includes a toilet and shower<sup>22</sup>. According to the information received from the Immigration Authority, five of the nine rooms do not meet the requirements set by the High Court regarding the living areas for prisoners<sup>23</sup>. A letter sent by the Association for Civil Rights and HRM to the Interior Minister and the Deputy Attorney General, Adv. Dina Zilber, on September 8<sup>th</sup> 2019, on the matter has not yet been answered.

On December 21, 2020, HRM and the Association for Civil Rights sent a well-argued request to the Minister of the Interior and the Minister of Internal Security to transfer the responsibility for the Yahalom facility from the Immigration Authority to the IPS. The response of the Ministry of Internal Security's Attorney General received on February 2, 2021, ignored the extensive information provided by the organizations regarding prolonged detention of women and children at the facility. According to the Attorney

---

<sup>22</sup> The Immigration Authority's response dated June 4, 2019, to HRM's freedom of information request.

<sup>23</sup> See the Immigration Authority's response dated June 2, 2019 to HRM's freedom of information request. Pursuant to HCJ [1892/14](#) ruling The Association for Civil Rights and others v. the Minister of Homeland Security and others, June 13, 2017, the minimal living area per detainee should be 4 sq. m. in a cell without toilette and shower and 4.5 sq. m. in cells with toilette and shower.

General the facility is intended "to serve as a temporary detention facility until the departure from Israel", therefore "the facility should naturally be managed by the Population and Immigration Authority"<sup>24</sup>. HRM's request for a meeting with the Attorney General on this matter was not answered.

---

<sup>24</sup> The response of the Ministry of Homeland Security's Legal Advisor (acting), Att. Ariel Siesel, February 2, 20121.

## Violation of the Rights of Detainees during the Corona Crisis

### *Overcrowded facilities*

As mentioned, on March 11, 2020, the migrants detained at Saharonim were transferred to Givon Prison. Each cell contained eight detainees, which is the maximum number allowed. Such overcrowded conditions increased the risk of contracting Corona and violated the Ministry of Health guidelines on social distancing.

With the outbreak of the Corona epidemic and in light of the density in the facility that highly endangered detainees, HRM representatives sent a request to the Immigration Authority and the Ministry of Justice to release all asylum seekers held under criminal procedure<sup>25</sup> who are not posing a danger to public safety, in order to reduce the risk of infection among migrant detainees. This request was not answered.

HRM referred questions to the Immigration Authority and the IPS regarding the treatment of Corona patients who need to be in quarantine. The IPS response indicated that during 2020 no migrant contracted Corona during his detention. The IPS conducted tests to detect the Corona virus in 56 men and nine women, all of whom were found to be free of the virus. According to the IPS, the treatment of patients and those requiring quarantine is anchored in an internal operational order<sup>26</sup>.

### *Delaying the deportation of migrants and their prolonged detention due to the Corona epidemic*

Already in mid-March 2020, before the outbreak of the epidemic in Israel, there were difficulties in flying some of the migrants to their countries of origin. It seems that the number of flights to many destinations has decreased, and thus delayed the departure of quite a few migrants who have expressed an explicit desire to return to their homeland, but the Immigration Authority has not been able to arrange their departure from the country for many months.

At the beginning of April, A.S. contacted HRM for the first time. A.S. is a migrant from Russia who entered Israel with a tourist visa and has been detained at Givon prison as of January 26, 2020. Already in the first hearing he had, on January 28<sup>th</sup>, he made it clear that his wish is to return to his homeland:

*"I am from Russia, I do not have a lawyer, I was arrested by immigration on Sunday in Bnei-Brak. They ask me questions in Hebrew, there was a translation into Russian. I want to return to Russia ... <sup>27</sup>"*

---

<sup>25</sup> HRM's request to the Minister of the Interior and the Minister of Justice, March 23, 2020.

<sup>26</sup> The response of the IPS' Freedom of Information Supervisor to HRM's requests, dated May 25, 2021.

<sup>27</sup> From a hearing held for detainee no. 9120895 by Judge Raja Marzouk, on January 28, 2020, in Givon Prison.

At his next hearing, on February 24<sup>th</sup>, Judge Liron Krispin-Boker expressed her astonishment that his removal had not taken place:

*"... already in his first hearing the detainee clarified that he would agree to return to his country, and therefore it is not clear why the detainee is still in custody. The Ministry of the Interior shall clarify before 3.3.20 why the detainee is still not removed to his homeland and when his flight is scheduled, while paying attention that the detainee started already cooperating since the first hearing that took place before the Detention Review Tribunal.<sup>28</sup>"*

Despite the Judge's appeal to the Interior Ministry and despite the clear cooperation of A.S., his removal did not take place during March, and in a hearing held on April 16, Judge Krispin-Boker ruled that if the removal does not take place by April 19, A.S. will be released from custody, which at that time had already lasted about four months<sup>29</sup>. At a hearing on April 20, the Judge granted the Interior Ministry's request to keep A.S. in custody for a few more days, as it was claimed that a flight to Russia was scheduled for April 23, 2020<sup>30</sup>. Since this flight did not take place either, the Judge eased his release conditions and reduced the amount of bail in order for him to be released<sup>31</sup>. Despite the reduction, even in the following months A.S. failed to raise the bail amount, and did not find a guarantor who agreed to sign a third-party guarantee for him.

At a hearing held on June 3, 2020, Judge Krispin-Boker referred to the conduct of the Ministry of the Interior:

*"The Ministry of the Interior will clarify no later than June 8, 2020 why the deportation of the detainee has been delayed for so long. Have the deportations to Russia stopped completely? In the Ministry's response dated May 19<sup>th</sup>, 2020, it said: 'the current entrance policy to Russia is to allow entrance every few days to certain areas, once it was to St. Petersburg and Moscow, and then to the ]areas of Rostov on Don and Wiktonburg [sic]. We are in continuous contact with the consulate and I hope that in the near future there will be flights also to the area of residence of the detainee'.*

*Two weeks have passed since the Ministry of the Interior gave its response - in which no update was received regarding the removal of the detainee (nor was an update sent regarding a future date for the removal of the detainee). Has the Ministry of the Interior ceased to act to promote the removal of the detainee? If the court is of the opinion that this is the case, I will have no choice but to re-examine his release while the balance point changes. Until further decision is made, the detainee will remain in custody."*

A few days later - and nearly six months after he was arrested and detained – A.S. was deported to Russia.

<sup>28</sup> From a hearing held for detainee no. 9120895 by Judge Liron Krispin-Boker, on February 24, 2020, in Saharonim Prison.

<sup>29</sup> From a hearing held for detainee no. 9120895 by Judge Liron Krispin-Boker, on April 16, 2020, in Givon Prison.

<sup>30</sup> From a hearing held for detainee no. 9120895 by Judge Liron Krispin-Boker, on April 20, 2020, in Givon Prison.

<sup>31</sup> From a hearing held for detainee no. 9120895 by Judge Liron Krispin-Boker, on April 27, 2020, in Givon Prison.

A.S. was not the only Russian migrant to remain in custody for many months due to the inability of the Interior Ministry to coordinate flights. The same happened with M.A., a Russian citizen who was arrested in February 2020 by Immigration Authority officers. Already in the first hearing on her case on February 26, 2020, M.A. claimed that she was interested in returning to her country<sup>32</sup>. According to the Interior Ministry, M.A. was supposed to return to Russia on March 31, but the flight was canceled<sup>33</sup>. Later in April, the Ministry of the Interior announced that a flight had been scheduled for May 3. Therefore, Judge Marzouk decided to keep her in custody until then<sup>34</sup>. It seems that this flight also did not materialize, and in a hearing held in May 2020, a representative of the Interior Ministry explained the status of flights to Russia:

*"Two days ago, an update was received at the consulate: a flight to Russia is expected for May 20, 2020. It seems that the woman of Russian nationality together with two nationals staying at the Givon facility will probably board this flight. Following a response sent so far, Russia has approved a flight for civilians from the areas of St. Petersburg and Moscow. The Russian civilian did not live there. Flights are slowly opening. In view of the Corona situation, we will oppose a request for release. The Russian national does not have a passport and we issued a transit document through the embassy."<sup>35</sup>*

The last decision in the case of M.A. was made on May 24, 2020, and therefore it can be assumed that after a waiting period of three months behind bars, she was deported to her country.

I.S. another migrant from Russia, was "forgotten in prison" due to Corona after being arrested by Immigration Authority officers on February 10, 2020. About a month after her arrest, on March 11, Judge Liron Krispin-Boker ruled:

*"An examination of the detainee's file shows that she is still in custody, even though already in the first hearing she clarified before the court that she would agree to return to her country and the court ordered her deportation. The Ministry of the Interior will clarify by March 12, 2020 when her removal is expected to take place."<sup>36</sup>*

Despite this decision, the removal of I.S. did not materialize, and at a hearing held on April 16, Judge Krispin-Boker ruled:

*"Already in the first hearing before the court on 12.2.20, the detainee clarified that she would agree to return to her country. Since then, the detainee has remained in custody, and it is not clear why. The Ministry of the Interior has not sent any update indicating the expected date of her removal or whether there is a plan to remove her within a reasonable timeframe. The only update sent by the Ministry of the Interior was on 12.3.20, stated that the court is requested to keep the detainee in custody for the 60 days available to the Ministry of the Interior by law. More than*

<sup>32</sup> From a hearing held for detainee no. 9122962 by Judge Raja Marzouk, on February 26, 2020, in Givon Prison.

<sup>33</sup> From a hearing held for detainee no. 9122962 by Judge Raja Marzouk, on April 5, 2020, in Givon Prison.

<sup>34</sup> From a hearing held for detainee no. 9122962 by Judge Raja Marzouk, on April 22, 2020, in Givon Prison.

<sup>35</sup> From a hearing held for detainee no. 9122962 by Judge Raja Marzouk, on May 14, 2020, in Givon Prison.

<sup>36</sup> From a hearing held for detainee no. 9121971 by Judge Liron Krispin-Boker, on March 11, 2020, in Givon Prison.

*two months have passed since the detainee was transferred to custody, and as stated, it is not clear whether the detainee's removal can take effect within a reasonable timeframe. Therefore, I rule that by April 20, 2020, the Ministry of the Interior is requested to clarify why the detainee has not yet been deported to her country and when her flight is expected. If the court is of the opinion that the removal of the detainee will not be able to take effect within a reasonable and defined time, she will be released from custody."*<sup>37</sup>

Finally, in a hearing held at the end of April, it was claimed that a flight to Russia was scheduled for May 3, and since this is the last hearing held on her case, it can be assumed that after four months of detention, she returned to her homeland<sup>38</sup>.

Another interesting case demonstrating the Ministry of the Interior's tremendous difficulty in deporting migrants during the first wave of the Corona epidemic occurred in late April, when several Ukrainian citizens detained in Givon were offered to board a flight to Belarus and continue from there to their homeland by public transport. One of the migrants offered this route is T.SH., who was arrested by Immigration Authority officers in early March 2020. In the first hearing in her case, she claimed that she wanted to apply for political asylum in Israel<sup>39</sup>. On April 1, 2020, her asylum application was denied. In a hearing on April 16, Judge Raja Marzouk set conditions for her release, since in his view there was no point in holding her in custody when there were no flights to Ukraine:

*"Examining the delay in deporting the detainee, I am of the opinion, as appears in the response of the Border Control officer, that it is due to the state of emergency and the cessation of flights. The Border Control officer did not provide a reason for his inability to remove the detainee within the timeframe ruled by the Appeals Court of despite the state of emergency. In addition, the response from the Border Control officer does not indicate any expected or specific date for the deportation to be carried out, as we are currently about ten days past the date of issuance of the ruling by the Appeals Court, and the delay in deportation is not due to lack of cooperation on her part, there was no such claim against her, but due to the cessation of flights and the waiting to schedule an emergency flight in which the detainee will be removed."*<sup>40</sup>

The Immigration Authority appealed this decision to the District Court, that ruled that if T.SH. is not removed by April 27, the decision of Judge Marzouk to release her will take effect again. Further to the District Court's ruling, it was planned that T.SH. will return to Ukraine in a connection flight from Israel to Minsk and then to Kiev. After the flight from Minsk to Kiev was canceled because Ukraine closed its borders due to the eruption of the Corona epidemic, the Interior Ministry offered T.SH. and other migrants to board the flight to Minsk anyway, receive \$ 100 and continue to Ukraine on their own. Since she refused to do so, she was considered by the Ministry as non-cooperative:

<sup>37</sup> From a hearing held for detainee no. 9121971 by Judge Liron Krispin-Boker, on April 16, 2020, in Givon Prison.

<sup>38</sup> From a hearing held for detainee no. 9121971 by Judge Liron Krispin-Boker, on April 23, 2020, in Givon Prison.

<sup>39</sup> From a hearing held for detainee no. 9123504 by Judge Raja Marzouk, on March 4, 2020, in Givon Prison.

<sup>40</sup> From a hearing held for detainee no. 9123504 by Judge Raja Marzouk, on April 16, 2020, in Givon Prison.

*"After receiving information that the connecting flight between Minsk and Kiev, scheduled for April 26, 2020, was canceled by the Ukrainian authorities, the flight from Israel to Minsk remained on condition that the land border between Ukraine and Belarus is open. The travel distance between Minsk and Kiev is about 5 hours by car and there is public transport between the countries. The detainee and three other detainees were offered a payment of \$ 100 for the travel from Belarus to Ukraine. The detainee refused the offer. The rest of the detainees agreed to the offer ... a request was made to the detainee and her attorney. She was informed on the details of the expected deportation, but despite many attempts to convince her, the respondent stated that she refuses to cooperate with her deportation from Israel and claimed that her health condition does not allow her to travel to her country. The respondent's conduct demonstrates lack of cooperation with its removal from Israel."*

Therefore, Judge Marzouk revoked the decision to release her.<sup>41</sup>

The special arrangement offered to migrants from Ukraine was brought to the attention of HRM on the same day in a frightened phone call from P.K., a Ukrainian migrant who was arrested by the Immigration Authority's officers in March and said at the first court hearing that he was interested in returning to his country<sup>42</sup>. In the beginning of April. P.K. was informed that he was scheduled to board a flight later that month, and when this was canceled, he was informed on April 26 through an interpreter that he would be able to board a flight to Minsk and continue from there to Ukraine while being given \$ 100 for that purpose. P.K. feared boarding a flight to an unrecognized country, where the government did not take any measures to stop the epidemic from spreading and even refused to acknowledge it<sup>43</sup>. The head of HRM's legal department urgently approached the legal department of the Immigration Authority in an attempt to understand whether the Authority was indeed trying to deport migrants to a country where they have no status, and in response, Adv. Shunit Shachar Adv. Shunit Shachar stated:

*"Indeed, the deportation of Ukrainian citizens to their country, via Belarus as a transit country, is expected today. The deportation was made in coordination with both the Ukrainian consulate and the Belarusian consulate. All those slated for deportation agreed to the deportation plan offered to them..."*

The court decision on the matter of T.SH. shows that contrary to Adv. Shachar's response, the plan that was offered to Ukrainian migrants was far from a coordinated deportation via a transit country. In May, there was no longer a hearing on the case of T.SH. and it is safe to assume that after two months in detention she was removed.

Another Eastern European migrant who was "forgotten in prison" for many months due to the crisis is A.CH., who was transferred to custody in January 2020. A.CH. was

---

<sup>41</sup> From a hearing held for detainee no. 9123504 by Judge Raja Marzouk, on April 27, 2020, in Givon Prison.

<sup>42</sup> From a hearing held for detainee no. 9124187 by Judge Raja Marzouk, on March 15, 2020, in Givon Prison.

<sup>43</sup> "A global pandemic? In Belarus life as usual, with football and restaurants and a president who does not 'count' the Corona", [Globes](#), 26.4.2020.

identified as a Ukrainian citizen, but already in the first hearing he claimed before the court that he also holds Moldavian citizenship and is willing to be deported to Moldova<sup>44</sup>.

In the following months, A.CH. repeated his claim that he was willing to leave for Moldova and even claimed that he had approached the embassy in order to extend his Moldavian passport. Despite his willingness to leave for Moldova and other countries, the minutes from the hearing show that the only destination offered to him was Ukraine in the end of April, and since then the Ministry of the Interior has been waiting for new guidelines that will allow deportation while being accompanied<sup>45</sup>. However, it seems that from the beginning of 2021 his removal from the country is delayed mainly due to his attempts to obtain documents proving his Judaism<sup>46</sup>.

Another case in which the court raised doubts regarding the Ministry of the Interior's authority and ability to deport detainees during the Corona crisis, concerned the case of A.B., a migrant whose identity is disputed and it is unclear whether he is a Ghanaian or Malawian citizen. A.B. was put in custody in February 2020, after being arrested by the Authority's officers for unlawful stay. During the hearings, A.B. claimed that he was interested in returning to Ghana and not Malawi, while the Ministry of the Interior also claimed that A.B. had admitted to them that he was indeed a Ghanaian citizen. At a hearing in his case on April 16, 2020, Judge Raja Marzouk ruled:

*"I am of the opinion that the removal of the detainee is not actually promoted whereas his claim that he signed a request for travelling documents long ago, is not contradicted."*<sup>47</sup>

This was also the case with T.B., a Georgian national who was arrested and placed in custody in November 2019. He claimed in his first hearing before the tribunal that he was willing to return to his country<sup>48</sup>. In subsequent hearings, it turned out that due to a debt, a stay of exit order was issued against him, which was not revoked even after a restraining order was issued. His deportation was first delayed due to the stay of exit order and then due to the corona epidemic. In February, Judge Liron Krispin-Boker maintained in protest of the conduct of the Ministry of the Interior:

*"The Ministry of the Interior has known since November 21, 2019 that a detention order has been issued in the case of the detainee. The Ministry has been engaging in an effort to revoke the order, but even now, four months after the detainee was brought into custody, the order has not been revoked. I cannot lend a hand with keeping the detainee in custody for another long period of time, without having a more accurate anticipated date for his removal (the Ministry of the Interior did not provide any information as to when the detainee's removal will take effect). In light of the above, I rule that as long as the detainee is not deported to his country (or*

<sup>44</sup> From a hearing held for detainee no. 9120276 by Judge Raja Marzouk, on January 19, 2020, in Givon Prison.

<sup>45</sup> From hearings held for detainee no. 9120276 by Judge Raja Marzouk, on January 15, 2020, April 19, 200, and September 24, 2020 in Givon Prison.

<sup>46</sup> From a hearing held for detainee no. 9120276 by Judge Merav Fleisher-Levi, on June 7, 2021.

<sup>47</sup> From a hearing held for detainee no. 9121475 by Judge Raja Marzouk, on April 16, 2020 in Givon Prison.

<sup>48</sup> From a hearing held for detainee no. 9116028 by Judge Raja Marzouk, on November 13, 2020 in Givon Prison.

*a definite date is not received for his flight) by March 15, 2020, I will examine his release from custody and his transfer to the custody of an Israeli guarantor, until a flight is scheduled for him (after revoking the restraining order)."<sup>49</sup>*

Following these remarks in March, Judge Krispin-Boker set the conditions for the release of T.B. from custody.<sup>50</sup>

While most cases of migrants left behind bars for extended periods due to logistical difficulties in coordinating flights, occurred during the first wave months of the Corona epidemic, similar incidents still occurred in August 2020: the Vietnamese national H.H. was transferred to the Givon facility after a period of criminal imprisonment. He entered Israel as a tourist and was convicted of a drug offense and served a six-month prison sentence. In his first hearing, H.H. told Judge Marzouk that he has a valid passport and he is interested in returning to his country<sup>51</sup>. His testimony in a subsequent hearing in his case, after nearly a month, indicate that he was not aware of any efforts undertaken by the Immigration Authority's officials to coordinate a flight for him:

*"I do not have a lawyer; the Immigration Authority did not tell me when I would be returned to Vietnam. The passport is where the police caught me, before they brought me here, I had a passport. I was caught and not returned. I want to go back to Vietnam; I do not know why I was not yet returned.<sup>52</sup>"*

On the same day (September 3), a first hearing was held in the case of another migrant from Vietnam, T.D.M., who was transferred to administrative custody after serving a lengthy prison sentence for a drug offense. He also said he was interested in returning to Vietnam<sup>53</sup>. In a subsequent hearing about one month later, he claimed that the Authority's representatives did not update him on any attempt to coordinate a flight back to Vietnam for him<sup>54</sup>. Further to T.D.M.'s appeal to HRM, Taly Bromberg, an HRM staff, sent a request, to the Vietnamese Embassy hoping to receive assistance in coordinating flights for the two. In response to her request, the third secretary of the embassy claimed that in contrast to the regular procedure, in which the authority informs the embassy when Vietnamese citizens are arrested for staying illegally in Israel - this time the embassy did not receive any report of the arrests. According to the secretary, a month earlier the embassy coordinated a rescue flight for its nationals, and if the embassy knew that there were Vietnamese citizens in detention at the time, they would have taken care of getting them on that flight. Finally, on December 22, 2020, after four months in detention, the two returned to Vietnam.

### *Difficulties in releasing detainees that cannot be deported due to the corona crisis*

<sup>49</sup> From a hearing held for detainee no. 9116028 by Judge Liron Krispin-Boker, on February 24, 2020 in Givon Prison.

<sup>50</sup> From a hearing held for detainee no. 9116028 by Judge Liron Krispin-Boker, on March 18, 2020 in Givon Prison.

<sup>51</sup> From a hearing held for detainee no. 9124775 by Judge Raja Marzouk, on August 12, 2020 in Givon Prison.

<sup>52</sup> From a hearing held for detainee no. 9124775 by Judge Raja Marzouk, on September 3, 2020 in Givon Prison.

<sup>53</sup> From a hearing held for detainee no. 9105928 by Judge Raja Marzouk, on September 3, 2020 in Givon Prison.

<sup>54</sup> From a hearing held for detainee no. 9105928 by Judge Raja Marzouk, on October 1, 2020 in Givon Prison.

In addition to the small number of active flights and the closure of borders of many countries, the Corona crisis was particularly difficult for detainees who originate from countries to which Israel applies its non-refoulement policies (Eritrea, Sudan and the Democratic Republic of Congo). The acute economic crisis experienced by members of the asylum seekers community in Israel, made it difficult for many detainees to raise the amounts of bail set for them as a condition for their release; The movement restrictions set forth in the emergency regulations and the closure of the Israel Post branch at Ben Gurion Airport made the payment of bail a cumbersome and complex procedure; moreover, the demand to find Israeli custodians after their release has become ever more challenging during the crisis and has extended the detention periods of asylum seekers, who in any case cannot and are not required to leave the country.

### **Difficulties in depositing bail amounts for releasing detainees**

The movement restrictions set forth in the emergency regulations and the closure of the Israel Post branch at Ben Gurion Airport have made the procedure of bail payment cumbersome and complex, which further postponed the actual release of detainees whose release has already been decided.

For example, in the case of A.T., an asylum seeker from Eritrea who was transferred from criminal imprisonment to administrative detention in September 2019. On March 18, 2020 Judge Liron Krispin-Boker set the conditions for his release, including bail deposit and presenting a custodian that would pick him up from the detention facility. Following a request put forward by A.T. and HRM representatives, demanding to clarify how the bail would be deposited under the closure restrictions, when the post office near the bail unit at Ben Gurion Airport was closed, in a hearing on March 26, Judge Krispin-Boker approached the Ministry of the Interior demanding a change in policy:

*"On March 24, 2020, the Tribunal issued a decision in the following wording: 'The Ministry of the Interior will respond to HRM's request to present an alternative to depositing the amount of bail as provided by this Tribunal (due to the closure of the post office branch that allows for the deposit of the bail and in view of the Corona crisis) as a condition for release from custody. As long as the tribunal is under the impression that the detainee or anyone on his behalf have no reasonable way to deposit the amount of bail (and as long as the Ministry of the Interior does not offer an alternative, such as bank transfer, etc. ...) within a reasonable timeframe, I will decide to cancel the terms of the bail...'*

*Following the tribunal's decision in his case today, the respondent is honored to note:*

*'It was today, that the bail was paid on behalf of two detainees and another on one will be paid shortly, in addition to six previous releases during the last few days. Corona is a cause for concern and perhaps for jokes, but it cannot be an excuse for witticisms in court and certainly not for relieving bail conditions.'*

*The response of the Ministry of the Interior is not satisfactory at all. While the request dealt with the ways to overcome the difficulties to deposit the bail in the current situation, as presented by the detainee's representatives, [...] the Interior Ministry responded to the request as if its purpose was to revoke that bail, and claimed that in fact bails had been deposited in past days. The Ministry of the Interior is requested to unequivocally clarify by 15:00 today (25/3/2020) where, when and how the bail amount can be deposited, otherwise I will revoke the bail conditions.*

*In what follows is the response of the Ministry of the Interior as of today 25/03/2020, that was received after the tribunal made the second ruling in his case. The respondent is honored to update that: 'the bail amount may be deposited at the bail counter on the second floor at Terminal 3 in Ben Gurion airport...'*

*We are in a special state of emergency and the restrictions on movement and on daily activities are increasing in order to safeguard public health and prevent the infection caused by the spreading corona virus. All government ministries, the Judiciary and banking institutions have joined the effort and are adapting and enabling alternative online activities. Therefore, it was expected that the Ministry of the Interior would also adapt accordingly and would allow the deposit of bails through the alternative means that currently exist, such as online bank transfer, transferring money using the 'bit' application, etc. It is clear that under the existing restrictions, the guarantors of detainees should refrain from traveling to the airport terminal, if it can be prevented. However, despite my two decisions on the matter, it is not apparent that any effort has been made in this regard. Therefore, in the special and exceptional circumstances of the special emergency situation, I rule that if by Sunday 29/3/2020 at 12:00, no alternative outline for the bail deposit is presented, the conditions of release of the detainee requiring bail will be revoked.<sup>55</sup>*

Following these remarks, Judge Krispin-Boker did revoke the bail as a condition of A.T.'s release, stating in her decision that he would have to deposit the bail within 96 hours after the movement restrictions expire<sup>56</sup>.

HRM asked the Immigration Authority to adapt the bail deposit procedure to the movement restrictions imposed on the public during the first closure. The Authority did publish on April 2, a new and updated procedure. According to the updated procedure, the guarantor depositing the bail must send the relevant details and forms to the bail unit by e-mail, and after receiving the confirmation, the bail should be deposited at the post office bank branch closest to his place of residence. At a hearing held on April 5 in the case of the H.A.B., asylum seeker from Sudan who was transferred to custody in February 2020 after serving a prison sentence, Judge Liron Krispin-Boker criticized the updated procedure:

*"The Ministry of the Interior's response indicates that a new procedure has been issued with information about the adjusted bail deposit procedure. However,*

<sup>55</sup> From a hearing held for detainee no. 1500852 by Judge Liron Krispin-Boker, on March 26, 2020 in Givon Prison.

<sup>56</sup> From a hearing held for detainee no. 1500852 by Judge Liron Krispin-Boker, on March 30, 2020 in Givon Prison.

*reading the details indicates that the person depositing the bail still needs to leave his home and go to the post office bank. It is not clear how this is possible without reducing to minimum the encounter with more people. There is no real difference between the need to go to the airport to deposit the bail and the current situation (which requires going to a post office branch). It is obvious that the Population and Immigration Authority has not yet made the necessary adjustments to the current state of emergency - like so many other authorities. It turns out that the updated procedure does not give any digital solution that eliminates the need to leave one's residence and be in contact with other people. Therefore, in the special and exceptional circumstances of the special emergency situation, I will instruct that if no alternative outline for bail deposit is presented by 6/4/2020 at 12:00 - the release conditions requiring a bail deposit will be revoked in the case of the detainee (i.e. tomorrow at 12:00 the detainee may be released without depositing the bail). In the aforesaid situation, the detainee will deposit the amount of the bail 96 hours after the movement restrictions are lifted (it is the duty of the detainee to be informed on the matter) ..."*<sup>57</sup>

During the closures imposed by the Corona epidemic, HRM representatives were able to persuade the tribunal to allow four detained asylum seekers to deposit their bail after their release, as soon as the movement restrictions expire. As a result of HRM's claims and the court decisions, the state has formulated a mechanism for depositing bail online, which will make it easier for detainees and their guarantors to deposit bail in future, regardless of the Corona restrictions<sup>58</sup>.

### **Difficulties in raising bail amounts and finding guarantors during the Corona crisis**

As mentioned, the acute economic crisis in which the community of asylum seekers in Israel found itself, made it difficult for many detainees to raise the amounts of bail for their release. The requirement to find guarantors that will serve as custodians after their release, became ever more challenging during the crisis because of the severe distress of the community of asylum seekers.

HRM's representatives filed two appeals to the district court on behalf of detainees that the Detention Review Tribunal and the Appeals Court ruled against releasing them simply because they failed to present guarantors who would serve as custodians for an indefinite period after their release<sup>59</sup>. The district court agreed with HRM that this requirement, which had been until then the persistent position of the tribunal, was unreasonable if the detainee did not pose a danger to public safety, especially during the Corona crisis<sup>60</sup>. During that time, HRM's representatives submitted a series of release requests and

<sup>57</sup> From a hearing held for detainee no. 1321488 by Judge Liron Krispin-Boker, on April 5, 2020 in Givon Prison.

<sup>58</sup> The numbers of four asylum seekers that were released on bail by the end of the emergency state: 9111010 1500852 1321488 1493350

<sup>59</sup> Administrative Appeal [41981-03-20](#) to the District Court (Tel Aviv)

<sup>60</sup> Ibid

initiated legal proceedings that resulted in legal achievements and the release of 19 asylum seekers throughout the year - more than half of the detainees at the time. These decisions will also assist more detainees who find themselves in this situation in the future.

### *Violation of the right to fair trial and the right to representation during the Corona crisis*

#### **Meeting detainees in detention facilities**

With the outbreak of the corona epidemic, in March 2020, all detention facilities in Israel were closed to visitors to prevent the spread of the virus. In May 2020, the government released new bills designed to restrict the access of various visitors to detention facilities in the event of a second wave of the epidemic. The bills made a sharp distinction between lawyers and other visitors. The access of lawyers will only be restricted in exceptional circumstances. The bills raised concerns that the rights of detained migrants, represented in court by HRM's representatives who are non-lawyers, may be violated. HRM's representatives participated in the deliberations of the Knesset's Interior Committee and succeeded in ensuring that their entry into the facilities would be allowed for the purpose of representing detainees, even though they are not lawyers. In a letter dated November 26, 2020, the IPS Legal Bureau confirmed that there is no reason to prevent the entry of HRM staff into the prisons for the purpose of representing detainees.

Moreover, in order to allow the representation of detainees even without visiting the detention facilities and without exposure to infection, the court granted HRM's request to be satisfied with oral statements of detainees saying that they are represented by HRM instead of signing a power of attorney form. This change enabled the representation of detainees even without a face-to-face meeting if necessary.

#### **Conducting online discussions**

During the first closure, most of the hearings in the Custody Review Tribunal took place online. Based on our experience we realized that this practice deprives the prisoners of their rights. Since most detainees in migration-administrative detention are not represented by attorneys and do not speak Hebrew, they are unable to properly argue before a judge, especially when the hearing is held online.

This was also true in the case of the detainee M.A. who managed to raise an amount of NIS 1,000 for his bail. However, in an online hearing he failed to express himself and explain his financial situation clearly, and therefore was sentenced for a bail of NIS 1,600, which he was unable to raise. Following a request submitted by HRM that clarified the detainee's true financial abilities, the bail amount was reduced to NIS 1,000, which enabled his release. However, prior to his release he was unnecessarily detained for two weeks. HRM's representatives presented these findings in the Knesset, and in a hearing held on August 4, 2020, the authorities undertook to hold all hearings in the Custody Review Tribunals in person, even if in other courts hearings continued to take place

online. This commitment was later introduced in a draft law that excludes the Detention Review Tribunal from other instances that may continue holding online hearings.<sup>61</sup>

---

<sup>61</sup> See section 1 of the Law on holding hearings using visual tools with the participation of prisoners and detainees, during the spread of the Corona virus (Temporary Order) 2020.

## Prolonged Detention of Migrants and Asylum Seekers

During 2020, at least 22 migrants were held in administrative-migrative detention lasting more than a year, of which 11 migrants were detained for more than two years<sup>62</sup>. As in previous years, this time too, the reasons for the prolonged detention vary. For example, the absence of diplomatic relations between the detainee's home country and the State of Israel, makes it difficult to obtain travelling documents. Other reasons include, non-cooperative mentally impaired migrants and the refusal of the authorities to release asylum seekers who are protected from deportation to their home countries who were arrested under the criminal procedure<sup>63</sup>.

B.S., a Liberian national, was released in October 2020 after seven years and two months in prison, of which the last five years and two months without interruption<sup>64</sup>. The documentation in his case raises the suspicion that he is mentally impaired, which is by and itself a failure that was documented in two reports in recent years: "Forgotten in Prison"<sup>65</sup> and "No Way Out – De Facto Stateless Migrants in Israel."<sup>66</sup>

B.S. crossed the border into Israel in 2004 and applied for political asylum. His application was rejected in 2006. After the non deportation policy of Liberian citizens residing in Israel was removed in 2007, he began a gradual procedure to regulate his status since he already had an Israeli spouse. The proceedings were discontinued during 2011 and he was arrested while facing deportation. At the hearing held in his case in August 2012, the OZ unit officers of the Ministry of Interior, reported that while they were trying to remove him, B.S. was crying and shouting while lying on the floor and thwarted his removal. In a hearing in his case in June 2013, Judge Marat Dorfman suggested to the Legal Aid department at the Ministry of Justice to consider appointing legal representation to B.S. stating:

*"The detainee was observed walking around the wing's courtyard, walking briskly from wall to wall. He does not make contact with anyone and does not answer questions. It seems to me that even if the detainee does not meet the definition of "mentally ill", it cannot be denied, as it seems, that he has psychological issues."*<sup>67</sup>

Following an application submitted by HRM to the Detention Review Court, B.S. was finally released in November 2013, after three years in detention<sup>68</sup>.

Two years later, in September 2015, he was arrested again. In his hearings he repeatedly claimed that he was not willing to return to his country, but along the years his condition seemed to have deteriorated. He refused to attend some of the hearings. In the hearings

<sup>62</sup> 5 Ethiopian nationals; 3 Sudanese nationals; 2 nationals from Ivory Coast; 1 Ghanaian national; 1 Gambian national; 1 national from Sierra Leone; 1 national from Sri Lanka; 1 Liberian national; 1 national from Guinea; 1 national from Chad; 1 from Tajikistan; 1 Jordanian national; 1 Russian national; 1 Ukrainian national; 1 national from the Philippines.

<sup>63</sup> The Hotline for Refugees and Migrants, "[Ye Shall Have One Law](#) – Administrative Detention of Asylum Seekers Implicated in Criminal Activity", 2017.

<sup>64</sup> Detainee no. 1414159 was held from November 2011 until 13.11.2013 and from September 2015 until October 2020.

<sup>65</sup> The Hotline for Refugees and Migrants, "[Forgotten in Prison: The Prolonged Detention of Migrants](#)", 2016.

<sup>66</sup> The Hotline for Refugees and Migrants, "[No Way Out: de Facto Stateless Migrants in Israel](#)", 2020.

<sup>67</sup> From a hearing held for detainee no. 1414159 by Judge Marat Dorfman, on June 3, 2013 in Saharonim Prison.

<sup>68</sup> From a hearing at the Tribunal for detainee 1414159 on November 13 2013.

that he attended, he refused to answer the judges' questions. In recent years he has refused to meet with HRM's representatives during their visits to the detention facility. At the time he was being held at Saharonim Prison, IPS officials shared with HRM's representatives their concerns about his mental health. In March 2020 HRM representatives requested Judge Liron Krispin-Boker, who was deliberating his case in court, to ask the Legal Aid Department at the Ministry of Justice to provide him with legal representation. Two months after HRM submitted the request, we were informed that the case was being handled by the Attorney General. In September 2020, a lawyer was appointed by the Legal Aid to represent B.S. in court, and in October 2020 he was released<sup>69</sup>.

As in previous years, the largest group of detainees who were held in prison for extended periods, were from Ethiopia. Five Ethiopian nationals were held for an extended period (three of them still in custody). Three Sudanese nationals were also detained for a long time, as were two nationals from Ivory Coast.

During 2020, many migrants who were held in prolonged detention were released. In August 2020, A.A., a Ghanaian national who had been held since February 2015, was released after five and a half years in prison.

S.T., a migrant who was first identified as a Nigerian national and then he was confirmed as being from Mali, was also released in July 2020 after four detention periods adding up to four years and two months in prison. S.T. crossed the Israeli border in 2010 and was released after being detained for one year. In 2011 he refused to board a flight to Niger, and in early 2013, after he was released, he did not show up for a scheduled flight. In July 2013 he was arrested again. Based on his testimony at the hearing it seems that he expressed willingness to return to his homeland:

*"I say that if I return with an Israeli document, they will tell me that I cannot enter the country and they will send me back here or take me to prison."*<sup>70</sup>

Two days later, Judge Dan Liberty wrote that S.T. agreed to sign the documents that authorize the issuance of an Israeli travel document that the Interior Ministry can use to send him back to Niger. Indeed, in November 2013 he was sent with the Israeli travelling document to Niger, but he was refused entry. The removal attempt was described in a hearing held in his case on November 22, 2013:

*"It is true that at first I refused to return to my country, but I was persuaded to travel to my country with Israeli Travelling Document. I told the Nigerian authorities when I entered that I was a Nigerian citizen and that I was born in Niger, and they did not let me in because of the Israeli certificate. I left Niger because I was poor and had no job. I was arrested at the border and was taken to the Ketziot facility. I was released from prison so that I could leave Israel voluntarily. It is true that I twice refused to fly and, in the end, I flew with an Israeli travelling document, and*

<sup>69</sup> From a hearing held for detainee 1414159 by Judge Raja Marzouk, October 12, 2020 in Givon Prison.

<sup>70</sup> From a hearing held for detainee 1362038 by Judge Dan Liberty, July 22, 2013 in Givon Prison.

*they did not let me in. I want to go back to Niger. Immigration should arrange the papers for me. I have to go home. The prison is not my home.*

*My belongings did not return with me on the flight. I was assured they would find out where my suitcase was. I will cooperate in whatever it takes to return home. In Niger I have a mother and a sister."<sup>71</sup>*

Once the deportation attempt failed, S.T. demanded from the Immigration Authority a sum of money for his consent to another attempt, which took place on January 8, 2014. S.T. was returned to Israel after being refused again. In November 2014, after nearly another year in detention, S.T. was subject to an identification interview by representatives of the Immigration Authority. Based on this interview he was no longer identified as a Nigerian national, but as someone whose identity is unclear<sup>72</sup>. In June 2015 Judge Zilberschmidt ruled that S.T. should be released while describing the deportation attempts:

*"On April 28, 2015, a document was submitted to the court for review by the Nigerian authorities, that indicates that the applicant was identified by the Nigerian authorities as a citizen of the State of Kenya. I have not found any evidence in support of the State's contention that this identification was influenced by the applicant's statements before the Nigerian authorities. On the contrary, reading the document clearly shows that the applicant's entry into Niger has been denied three times in the past since he was carrying Israeli documents. I do not share the opinion of the Authority, according to which the applicant's entry was denied as a result of the applicant's statements at the airport. This conclusion cannot be drawn from the document.*

*It is not disputed that since my ruling as of December 25, 2014, in which I rejected the request for release, the Authority has not been able to determine the identity of the migrant, and his removal is not in sight. The applicant has been in custody for about two years - a disproportionate and unreasonable period in the circumstances...*

*I am aware that in the past the applicant was released from custody and did nothing to advance his departure from Israel. I am also aware of the applicant's conduct in the past when he chose to violate the trust that the court bestowed on him. However, I am of the opinion that in view of the impasse that the Authority is facing, it would be unreasonable to continue ordering the migrant's detention in custody for such a long period, and he should be allowed to leave Israel on his own."<sup>73</sup>*

Three months later, in September 2015, S.T. was arrested again and returned to custody. After a five-month detention, Judge Raja Marzouk ordered his release in February 2016<sup>74</sup>. In December 2019, S.T. was arrested once more, and during a hearing in his case, a lawyer he hired described the State's failed attempts to deport him and claimed that S.T.

<sup>71</sup> From a hearing held for detainee 1362038 by Judge Dan Liberty, November 20, 2013 in Givon Prison.

<sup>72</sup> From a hearing held for detainee 1362038 by Judge Michael Zilberschmidt, December 25, 2014 in Saharonim Prison.

<sup>73</sup> From a hearing held for detainee 1362038 by Judge Michael Zilberschmidt, June 8, 2015 in Saharonim Prison.

<sup>74</sup> From a hearing held for detainee 1362038 by Judge Raja Marzouk, February 14, 2016 in Holot Prison.

was interested in returning to his country<sup>75</sup>. However, Judge Marzouk decided to keep S.T. in custody. In June 2020, Judge Liron Krispin-Boker criticized the Interior Ministry regarding its conduct in the case of ST:

*"It is not clear from the Ministry of the Interior's response whether the removal of the detainee is possible at all or whether it is feasible within a reasonable time. The Ministry of the Interior clarified that the documents signed by the detainee on 5.5.20 were submitted for processing, and due to the complexity of the case, this may take a long time..."*<sup>76</sup>

In July 2020, after eight months in detention without any "horizon for his removal", Judge Krispin-Boker ordered the release of S.T. from custody<sup>77</sup>.

Another asylum seeker who has been held in administrative detention for a long time, despite the fact that he is Sudanese, protected under the non-removal policy, is M.A.A.. M.A.A. was put in administrative custody in July 2018, after serving a criminal sentence. The minutes of the tribunal hearings in his case, indicate that despite the fact that he is legally staying in Israel, by virtue of the non-removal policy, for more than a year Judge Liron Krispin-Boker was focused on only two issues: whether he has been able to find custodians, and whether he is willing to return to his country or go to a third country.<sup>78</sup> It should be noted that HRM covered Judge Krispin-Boker's faulty conduct on this matter in detail in the 2019 yearly report<sup>79</sup>. In a hearing she held in his case in February 2020, Judge Krispin-Boker set the conditions for his release for the first time. However, M.A.A. found it difficult to raise the bail amount that was ruled for him. Therefore, in June Judge Krispin-Boker reduced the bail amount from NIS 3,000 to NIS 1,000<sup>80</sup>. Thus, while he was sentenced for seven months in prison for committing a criminal offence, M.A.A. was held in an administrative detention for nearly two years.

On January 11, 2018, HRM applied to the then Minister of Justice, Ayelet Shaked, to arrange legal representation for migrants who are detained for extended periods. On January 14, 2021, the Ministry of Justice replied that the issue would be examined during the discussions on the Legal Aid Act (Amendment No. 23), 2018, which passed its first reading at the end of 2018.

## Recommendations for preventing the prolonged detention of migrants

<sup>75</sup> From a hearing held for detainee 1362038 by Judge Raja Marzouk, December 18, 2019 in Givon Prison.

<sup>76</sup> From a hearing held for detainee 1362038 by Judge Liron Krispin-Boker, June 1, 2020 in Givon Prison.

<sup>77</sup> From a hearing held for detainee 1362038 by Judge Liron Krispin-Boker, July 2, 2020 in Givon Prison.

<sup>78</sup> From hearings for detainee 1314113 held by Judge Liron Krispin-Boker, on 10.7.2018, 9.8.2018, 6.9.2018, 4.10.2018, 4.11.2018, 3.12.2019, 4.2.2019, 2.4.2019, 1.5.2019, 29.5.2019, 26.6.2019, 8.7.2019, 19.8.2019, 26.9.2019, 23.10.2019, 19.11.2019, 18.12.2019 in Givon Prison.

<sup>79</sup> The Hotline for Refugees and Migrants, "[Detention Monitoring Report 2019](#)", October 2020.

<sup>80</sup> From a hearing held for detainee 1314113 by Judge Liron Krispin-Boker, on 10.2.2020, 9.3.2020, 16.4.2020, 14.5.2020, 18.6.2020, 24.6.2020 in Givon Prison.

- Legal representation should be appointed on behalf of the state, for any migrant detained for a long period to ensure that he is effectively represented in his detention proceedings.
- The abolition of the criminal procedure, which allows the indefinite detention of "infiltrators" who were involved in criminal proceedings, should be ordered. Alternatively, a maximum period of detention should be set according to the procedure, that would limit the period of detention imposed on "infiltrators".

## Detention Review Tribunal for Undocumented Migrants

### *Insufficient vigilance in protecting the rights of mentally-challenged migrants*

The story of B.S., told in the previous chapter, well illustrates how the tribunal is not vigilant enough about the rights of mentally challenged migrants, who may spend many years in administrative detention on suspicion of not being cooperative with their deportation attempts, while their behavior is a result of their medical condition.

S.L., a Gambian citizen, has also been detained for one year and nine months in a row, after several previous administrative detentions during which the Authority failed to deport him to his country of origin<sup>81</sup>. On January 29, 2020, HRM requested the Tribunal to appoint legal representation for S.L. on behalf of the Legal Aid Department at the Ministry of Justice. At that time, S.L. was detained for four months without being represented, even though his unstable mental condition was known to the court, as the court proceedings in his case indicate. Moreover, security instructions were issued in his regard, after he was insubordinate at the end of one of his hearings. HRM's intervention led the tribunal to order the appointment of a guardian for S.L., but that did not lead to handling his case in a more appropriate way. Therefore, HRM was forced to request the tribunal to order the transfer of the case to the Legal Aid.

Another mentally challenged migrant, A.A. an Ivory Coast citizen, was deported from the country in September 2020, after being held in the Givon prison for four years and four months in a row. In this case too, the tribunal was aware of his mental condition and to his being a father of three daughters who were born in Israel and were granted legal status in Israel.<sup>82</sup>

On January 27, 2020, HRM submitted a request to Judge Michal Tzuk-Shafir on behalf of A.A. Based on the tribunal hearings and the impression of HRM's representatives it was evident that he suffers from a mental disorder, and that he is unable to represent himself. Despite HRM's efforts and although the tribunal was aware of his deteriorating mental condition, A.A. was deported to the Ivory Coast in September 2020, without being represented.

### *Inattentiveness to suspected cases of human trafficking*

The court is an important crossroad for identifying victims of human trafficking. Therefore, detainees should be asked questions that will reveal such cases in a way that will eradicate human trafficking in Israel. However, tribunal transcripts reveal that judges are not attentive to evidence of human trafficking when hearing testimonies of detainees.

---

<sup>81</sup> From a hearing held for detainee 9113129 by Judge Raja Marzouk, on June 9, 2021 in Givon Prison.

<sup>82</sup> From a hearing held for detainee 1492398 by Judge Raja Marzouk, on September 3, 2021 in Givon Prison.

## Victims of human trafficking for prostitution purposes are not yet properly identified

Human rights organizations often lament that the authorities are only attentive to victims of human trafficking for prostitution purposes while ignoring for years the plight of migrant workers who are brought to Israel legally and are sometimes employed in slavery conditions. However, the story of D., a Moldovan citizen, demonstrates that even in 2020, border control officers as well as the judges in prison tribunals, who are supposed to be trained in identifying human trafficking victims, fail to identify "classic" victims of human trafficking for prostitution purposes.

D. was transferred to Givon prison at the end of 2020, after serving several months in prison for possession of drugs. The border control officer who held the hearing in her case, issued a deportation order, while ignoring the fact that her testimony clearly showed that she was a victim of human trafficking and that her minor children, who are Israeli citizens, will remain here in boarding schools after she is deported.

The judge at the Givon court, Adv. Yoav Bar-Lev, documented D.'s clear statements in the hearing, but failed to refer the case to the unit combatting human trafficking at the Ministry of Justice:

*"I entered Israel in 2002 through Egypt. I do not remember if I applied to the Ministry of the Interior to regulate my status since I used drugs in the past. I came to work as a cleaner but I ended up being a prostitute in Israel. I do not have relatives in Moldova, I was in boarding school from a young age in Moldova... before I was arrested, I was in rehab several times and lived on the street for about a year and a half. I want to create my family here. I refuse to leave Israel without my children."*

Four years earlier, D. told HRM how she was brought to Israel fraudulently, and was held, like thousands of other women, in a brothel where she had to provide sex services to many men against her will and without pay, until one customer "bought her freedom" from her pimp. Her living conditions in the brothel led her to become addicted to drugs and later on to having a relationship with a violent man. Her children were born to an Israeli citizen, who may have tried to regulate her status over the years, but there is no evidence accounting for that in the computers of the Immigration Authority. Based on the experience of many migrants, who repeatedly apply to the Immigration Authority to regulate their status and do not succeed to convince the Authority to accept their request or even merely to record the submission of their request, it is not surprising that the woman's attempts to regulate her status were not documented.

In 2017, D. came to HRM's offices to seek help. In turn, HRM contacted on her behalf the police unit combatting human trafficking. However, D.'s request for recognition was denied, while she in turn changed her phone number and disappeared.

In October 2020, D.'s deportation without her children was finally prevented, after her special circumstances were accidentally brought to the knowledge of Adv. Meirav Ben-Ze'ev. Ben-Ze'ev was appointed by the Legal Aid Department to represent D. and thanks

to her efforts, D. was recognized as a human trafficking victim and was therefore transferred from prison to a designated shelter for human trafficking victims. A month later, D. left the shelter and never returned. In early December 2020, her body was located and it was determined that she had died of an overdose.

During the 18 years D. was living in Israel, countless police officers, inspectors and social workers failed to identify her as a victim of human trafficking. Despite the alleged training that all those officials, especially the Immigration Authority officers and court judges, are given. None of them identified D. as a trafficking victim, and it was only a coincidence that her deportation from the country without her children was prevented.

### **Attentiveness to "infiltration through Ben Gurion Airport" by Georgian citizens**

An exception to the inattentiveness to cases of human trafficking was the interrogation of Georgian citizens who entered Israel through Ben Gurion Airport without having their passports controlled. The interrogation began in 2019 and ended in 2020.

During 2019, the police investigated the case of a network that smuggled Georgian citizens into Israel through Ben Gurion Airport<sup>83</sup>. It seems that during the investigation the judges asked the illegal migrants many questions. In 2020 nine Georgian citizen, who entered Israel through Ben Gurion Airport without going through passport control, were brought before the tribunal. The migrants described to Judge Raja Marzouk how they entered Israel, and the Judge referred their case to the Israel Police. At least two of the migrants have tried to enter Israel in the past, and their entry was denied<sup>84</sup>. This is, for example, how the detainee Z.M. described to the court how he entered Israel in June 2018:

*"I entered Ben Gurion Airport; I did not know that the entry was illegal. I paid money to a woman in Georgia who guided to me how to get in. At Ben Gurion Airport no one waited for me. I paid \$ 8,000 in Georgia; she was called Helen. I do not know if it is real, I do not know anyone in Israel who knows that woman. No one was waiting for me here, in a video they showed me a way at Ben Gurion Airport I did what they said ... I do not have the video. She did not give it to me just showed me. I do not have a visa to be in Israel. I know it's forbidden. She told me I would not have a problem. I paid money."*<sup>85</sup>

Migrants from Georgia who were brought before the Detention Review Tribunal during 2020, who testified they have entered Israel illegally, did so in 2017-2018. Hopefully, the police investigation in the case of the smuggling network did eliminate the smuggling of migrants into Israel.

<sup>83</sup> The Great Fiasco at Ben Gurion Airport: Hundreds of Georgian Nationals were Smuggled into Israel in recent years, [Kan11](#), June 17, 2019.

<sup>84</sup> From a hearing held for detainee 9119536 by Judge Raja Marzouk, on January 6, 2020 in Givon Prison; detainee no. 9121362, Judge Raja Marzouk, on February 5, 2020 in Givon Prison.

<sup>85</sup> From a hearing held for detainee 9121176 by Judge Raja Marzouk, on February 2, 2020 in Givon Prison.

### *Flawed translation in hearings for detained migrants*

Poor translation often leads to failures in hearings conducted by border control officers and tribunal judges. Thus, for example, poor translation in tribunal often leads to contradictions between the detainee's version and the version of the border control officer, which may portray the detainee as unreliable.

In the HRM 2019 yearly report, we elaborated on several failures in the conduct of the tribunal, including the issue of poor translation and the flawed transcripts<sup>86</sup>. In 2020, HRM's representatives continued to witness cases of flawed translation in tribunal hearings, that resulted in transcripts that did not reflect what was said at the hearing. Thus, for example, at a hearing conducted in the case of A.D., a Guinean national, the judge recorded a very partial transcript, which did not reflect at all what was said at the hearing<sup>87</sup>.

### **Recommendations for improving the protection of detainees' rights at the Detention Review Tribunal**

- The hearings at the Detention Review Tribunal should be constructed in a way that maximizes the likelihood of identifying victims of human trafficking and other crimes.
- The periodic training of judges should be ensured in order to provide them with tools to identify human trafficking and slavery victims. Such tools should be recognized in order to allow them to handle the cases that are identified.
- There should be a well-defined procedure for handling suspected cases of human trafficking or slavery, that will allow the rapid referral of such cases to the relevant bodies in the Israel Police, the Ministry of Justice and the welfare authorities.
- A quality and complete translation must be ensured at hearings held by border control officers and tribunal judges.
- A procedure that will allow the Tribunal to identify mentally challenged detainees and ensure the protection of their rights must be established.

---

<sup>86</sup> The Hotline for Refugees and Migrants, [Detention Monitoring Report 2019](#), October 2020.

<sup>87</sup> From a hearing held for detainee 1240636 by Judge Liron Krispin-Boker, on January 7, 2020 in Givon Prison.

## Women and Children in Detention Facilities

As emerges from the data presented at the beginning of the report, 46,675 (84%) of care-givers are women<sup>88</sup>. There is a constant increase of male and female migrants that reside in Israel legally for prolonged periods. Therefore, the temporary and precarious status of those migrants is very problematic. At the end of 2020, among the migrant workers residing in Israel legally, 28,997 stayed in Israel for more than six years, despite the fact that the maximum legal period of employment should be five years and three months. Of these migrants, 12,682 stayed in Israel legally for more than ten years, while 103 of them stayed legally for more than 16 years<sup>89</sup>.

The vast majority of care-givers end their legal work period in Israel and return to their homeland, but there are those who have to make an inhuman choice at the time they have to leave the country, for various reasons: some find themselves in romantic relationships; some could not carry on working legally because they became pregnant, and as a result did not save enough to be able to leave Israel. The huge wage gaps between Israel and their home countries, lead many to the decision to stay in Israel illegally. In 2020, in addition to 55,705 care-givers with visas, there were also 2,283 care-givers who lost their visas but remained in Israel illegally<sup>90</sup>.

It is important to note in this context that the State of Israel restricts the right of migrant workers to lead family life. Migrants are prohibited from having a marital relationship or build a family - otherwise their visas will be revoked, and they will be arrested and deported from Israel<sup>91</sup>. A migrant who gave birth in Israel and wishes to remain and work in Israel without having her visa revoked is required by the Immigration Authority to extradite the father of her child so he can be deported or to prove that he left the country on his own. In addition, in cases that the employer of the care-givers who gave birth does not agree to give the baby shelter, she must find an "arrangement" for the baby that will allow her to continue working 24 hours a day, six days a week. A child born to migrants who stay in Israel illegally is also considered an illegal migrant<sup>92</sup>.

In the 2019 detention monitoring report, we elaborated on the new policy that allows the detention of migrant families whose children are school students. The description of the legal proceedings that were taken against the families, coupled with the spreading corona virus, have led to a significant reduction in such family arrests<sup>93</sup>.

The 2019 Detention Monitoring report revealed that no families were arrested during the Corona epidemic, and therefore, we focused on submitting freedom of information requests in regard to family arrests in the first three months of the year. In response to

---

<sup>88</sup> Footnote 5, p. 25.

<sup>89</sup> Footnote 5, p.19. The legal stay of so many caregivers is made possible in accordance with the procedure "Extension of licenses in the Nursing Industry for Humanitarian Reasons" after receiving the recommendation of the "Minister's Advisory Committee to extend licenses B1 in the nursing industry for special humanitarian reasons".

<sup>90</sup> Ibid

<sup>91</sup> The Immigration Authority, "[procedure for caring for a pregnant foreign worker and a foreign worker who gave birth in Israel](#)", procedure no. 5.3.0023, May 20, 2013.

<sup>92</sup> Ibid

<sup>93</sup> The Hotline for Refugees and Migrants, "[Detention Monitoring Report 2019](#)", October 2020.

a freedom of information request about undocumented minors detained in the Yahalom facility, the Authority said that “there were no family arrests during the period indicated in the request (January-March 2020).”<sup>94</sup> In response to a request about enforcement activities in regard of undocumented migrant families, the Authority replied that in January 2020 one search warrant was issued for a family home of a three-year-old Moldovan boy who was arrested; in February search warrants were issued for four family homes including a ten-year-old girl from the Philippines, a three-year-old boy from the Philippines, a boy and a girl, each a year old, from Ukraine and a year-old girl from Sierra Leon; in March 2020, the Enforcement Unit stopped detaining migrants, therefore no search warrants were issued at all.<sup>95</sup>

HRM is familiar with eight families, including Israeli-born student family members, who during 2020 were subject to deportation attempts: four families, with school students, who were subject to a deportation attempt in January 2020; three families in February; and one family in March.

Contrary to the Authority's response, insisting that there were no family arrests in January-March 2020, three of the eight mothers arrested during those months, chose to take their children with them to prison.

---

<sup>94</sup> Freedom of information response by the Immigration Authority, April 19 2021.

<sup>95</sup> Freedom of information response by the Immigration Authority, May 15 2021.



A mother and her daughter arrested by officers of the Immigration Authority, January 7<sup>th</sup> 2020. Photo Credit: UCI – United Children of Israel.

In none of the cases known to HRM, in which mothers and her children were arrested, the Authority had a search warrant. One of the mothers, who was arrested on the morning of January 7<sup>th</sup>, 2020, managed to be released with her ten-year-old daughter the next day at 2:00 AM on NIS 30,000 bail<sup>96</sup>. Another woman, a mother of two children, was arrested only with her baby girl on February 8<sup>th</sup>, 2020, and was later released by the Lod District Court after 14 days of detention, on bail of NIS 15,000 as well as other restricting conditions. Contrary to the Authority's response, that woman was detained with her baby daughter in the Yahalom facility in the last three nights of her incarceration, after 11-day detention in Givon prison. The woman said that despite the severe problem of fleas in Givon Prison, which was very troublesome to her baby, she preferred to be detained there, since she was allowed to get out of her cell during the day and she could have her baby daughter sleeping in a cot next to her. When she was detained in the Yahalom facility, she had her daughter sleeping next to her in a particularly narrow single

---

<sup>96</sup> The details are kept with HRM.

bed. Although the two were detained in a cell with additional beds, she could not leave her daughter in a separate bed alone and preferred to huddle with her in the same narrow bed<sup>97</sup>. A third mother was arrested on the morning of March 4<sup>th</sup>, 2020 with her two daughters, aged eight and nine, while her youngest son was staying with his father at the time. This family was also released on NIS 30,000 bail, after spending two days in Givon Prison<sup>98</sup>. In all of these cases, the mothers who brought their children to prison were quickly released thanks to the mobilization of civil society activists and organizations who raised the amount of the bail.

The other five mothers managed to avoid bringing their children to prison thanks to civil society activists and organizations, who quickly mobilized and raised the tens of thousands of shekels demanded by the Authority as a condition of their release. Until they were released, the five mothers were able to leave their children with friends.

All families have been conducting legal proceedings since the beginning of 2020 in order to regulate their status and prevent their deportation from the country.

We are aware of the IPS' efforts to accommodate for women detainees and their children in the Givon Prison. However, we believe that under no circumstances children should be placed in prison. Although the Entry to Israel Law, section 13h(e), stipulates that the Minister of Internal Security, with the consent of the Minister of the Interior, may amend regulations regarding the custody of families and children, no regulations have been amended, and the Entry to Israel Law does not refer to the custody of minors.

---

<sup>97</sup> The details are kept with HRM.

<sup>98</sup> The details are kept with HRM.

## Individuals Denied Entry to Israel

The exact number of individuals who were denied entry to Israel in 2020 is unclear. According to the document "Data on Foreigners in Israel - Summary of the Authority for 2020", from March 2021<sup>99</sup>, some 5,006 individuals were denied entry at Ben Gurion Airport. A month later, the response to the freedom of information request submitted by HRM to the Immigration Authority, indicated that 4,089 migrants were denied entry. It seems therefore, that the number provided in response to the freedom of information request, has been derived from the Authority's computerized system prior to extracting the data for the "Data on Foreigners in Israel" document<sup>100</sup>. In any case, this is a very small number compared to the 23,312 migrants who were denied entry in 2019.

As in previous years, this year too, at the top of the list we find Russian nationals (1,104 refused), Ukrainian nationals (1,035 refused) and Georgian nationals (330 refused)<sup>101</sup>.

Of the 4,089 migrants who were denied entry during the year, 1,258 were transferred to the Yahalom facility until they could be returned to their countries of origin<sup>102</sup>. In response to the freedom of information request submitted by HRM, the Authority said that "as of March 2020 the Yahalom facility was closed down and was not receiving individuals denied entry or facing deportation".<sup>103</sup> It can be concluded therefore, that all 1,258 refused entry who were transferred to the Yahalom facility (in the absence of flights back to their homeland) were detained in the facility from the beginning of January to mid-March 2021, when the epidemic broke out in Israel. One woman was held in the facility for more than a week, and another woman for more than two weeks. None of the children were held in the facility for more than a week.

The Authority's response indicates that none of those who were refused entry and were transferred to the facility needed medical care in 2020. Nevertheless, a man and a woman were evacuated from the facility to a hospital for medical treatment during the year.

The Authority does not know how many of those who were refused entry hired legal services during 2020. However, in its response, the Authority clarified that, like in 2019 as well, none of the legal proceedings taken in favor of those refused entry resulted in granting them entry to Israel during the year.

However, even in the absence of legal proceedings, the border control officers allowed the entry of 25 individuals who were refused entry to Israel, 18 of them women, subject to guarantees<sup>104</sup>.

### *Denial of access to the asylum system to individuals denied entry to Israel*

---

<sup>99</sup> Footnote 5.

<sup>100</sup> Freedom of information response from the Immigration Authority to a request by HRM received on April 14, 2021.

<sup>101</sup> Footnote 5, chart 13, p. 33.

<sup>102</sup> Freedom of information response from the Immigration Authority to a request by HRM received on April 14, 2021.

<sup>103</sup> Freedom of information response from the Immigration Authority to a request by HRM received on June 7, 2021.

<sup>104</sup> Ibid

For the past three years, HRM has repeatedly warned that access to the asylum system is denied for asylum seekers at Ben Gurion Airport, even though the immediate deportation without examination of individuals who declare their lives or liberties are in danger in their home country of origin, is a violation of refugee laws and the non-refoulement principle that is part of customary international law, which Israel is obligated to uphold<sup>105</sup>. The information provided by the Authority indicates that only asylum seekers that were represented by HRM in those years were able, after intensive deportation efforts by the Authority which were countered by legal proceedings conducted by HRM, to eventually submit asylum applications at the Yahalom facility. It is not known how many individuals denied entry tried to apply for asylum in 2020, but the Authority's response indicates that no detainee at the Yahalom Facility applied for asylum during the year<sup>106</sup>, which does not necessarily indicate that migrants who were denied entry were not deported without being given the opportunity to apply for asylum, despite their need for asylum.

The Immigration Authority's response shows that some of the recommendations made by HRM regarding access to the asylum system have been adopted:

*"The detention facility has sign posts in various languages, including all the relevant information regarding how to apply for political asylum. The application forms for political asylum can be obtained from officers of the Enforcement Unit of the Immigration Authority that are posted in the facility, as well as from any officer, shift manager or the facility manager. Officers of the Enforcement Unit of the Immigration Authority posted at the Yahalom facility are in daily contact with those in custody and are available to receive their inquiries on any subject, including forms of asylum applications. When the detainee is done with filling out the forms, a notice is given to the Enforcement Unit headquarters, to whom the forms are forwarded for further processing. In case translation of the forms at the facility is needed, the detainee can seek the help of friends, relatives or a lawyer representing detainees".<sup>107</sup>*

## Summary and Recommendations

As mentioned in the introduction to this report, our detention monitoring activities focused in 2020 on several key issues: the violation of the rights of detained migrants due to the Corona epidemic; the prolonged arbitrary detention of migrants without purpose and to no avail; missing out on identifying victims of human trafficking and vulnerable mentally challenged detainees and migrants; lastly, the detention of women and their children.

HRM's position is consistent: placing migrants and asylum seekers in detention should be used as a last resort in very limited circumstances. Currently, it is widely used in cases of undocumented migrants waiting to be deported from Israel. According to the UN High

---

<sup>105</sup> For detailed explanation, see the website of the [Hotline for Refugees and Migrants](#).

<sup>106</sup> Freedom of information response from the Immigration Authority in response to HRM's request, received on April 26 2021.

<sup>107</sup> Freedom of information response from the Immigration Authority in response to HRM's request, received on April 14 2021.

Commissioner for Refugees guidelines, "Detention is an exceptional measure and can only be justified for a legitimate purpose."<sup>108</sup>

We highlight our key recommendations regarding the various issues discussed in this report:

- The basic rights of detained migrants who suffer from emergency health conditions must also be safeguarded and protected. In particular situations in which detainees waiting for their deportation are "forgotten in prison" due to the absence of available flights must be prevented;
- Action should be taken to reduce the prolonged incarceration of migrants by appointing lawyers representing detainees, among other things;
- It must be ensured that children are not placed in detention;
- It must be ensured that migrants whose lives may be in danger in their country of origin will not be deported without being given the opportunity to seek asylum in Israel;
- Effective mechanisms for identifying and locating victims of human trafficking and slavery must be established and used by the authorities;
- The responsibility over the Yahalom facility should be transferred from the Immigration Authority to the IPS.

And most importantly - our main recommendation is to avoid detaining migrants and asylum seekers, especially children, and preferably use more humane and economically effective means.

---

<sup>108</sup> UNHCR, [Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention](#), 2012.