

Hotline for Migrant Workers

"You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt" - *Exodus 22:20*

January 2012

Unlawful Long-term Detention of Asylum Seekers and Migrants

General Information

Article 13 F (4) of the Entry to Israel Law states that an illegal resident who is detained for more than 60 days will be conditionally released. It is thereby emphasized that the purpose of the detention is to facilitate the deportation of the detainee, and not to punish the individual. If the detainee is not slated for deportation, there is neither reason nor legal justification to continue holding the detainee in detention.

In accordance, the Ministry of the Interior's (MOI) border control officers are supposed to facilitate the release of detainees who cannot be deported for various reasons within 60 days. The Administrative Review Tribunal is responsible for reviewing the decisions of the border control officers to guarantee that the law is respected. Unfortunately, neither the border control officers nor the Administrative Review Tribunal release detainees after 60 days of detention, even though it is obvious that their deportation cannot be realized in the near future.

This situation has arisen due to Israel's desire to grant refugee status to the lowest possible number of asylum seekers. Therefore, the MOI willfully makes it difficult for asylum seekers to prove their nationality. During the long Refugee Status Determination (RSD) procedures the authorities prefer to keep asylum seekers in detention, to ensure their fast deportation in case the request for asylum is rejected.

On January 18, 2012 the Prevention of Infiltration Law came into force. The law enables the detention of asylum seekers who "infiltrated" through the Sinai desert for three years without trial, or indefinitely if they come from enemy states, such as Sudan (see HMW report about the prevention of infiltration law).

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According to the Immigration Authority, 54,000 "infiltrators" arrived in Israel from the Sinai Desert by the end of 2011, 55% of them Eritreans and 25% of them Sudanese.¹ The authorities refrain from deporting these two groups and do not conduct RSD procedures for them. But because Eritrean and Sudanese nationals cannot be deported, the authorities hold off recognizing them as such. As a result, many Sudanese and Eritreans, who insist on being Sudanese and Eritreans, are accused of concealing their real nationalities and are defined as "uncooperative." If a detainee is "uncooperative" the Entry to Israel law does not require his or her release from detention, even after 60 days in prison. According to the head of the Eritrean Committee in Israel, Adv. Haile Menegisteb, the committee documented 517 Eritreans, recognized by the committee as such, who were denied protection papers since the MOI claims they are impostors.

Duration of Detention

Every year, The Hotline for Migrant Workers (HMW) processes the data of detainees in both Saharonim and Givon prisons to determine the average period of detention. Last year, in August 2010, there were 1,042 illegal residents unlawfully held for over 60 days² by the Israeli Prison Service; 415 of them have been detained for over a year.

In 2011 we were unable to provide exact data regarding detainees in Saharonim Prison because in addition to being denied entry to the sections, HMW also unable to obtain prison lists.

A request for that information was sent on May 18, 2011 to the Israel Prison Service. Under the Freedom of Information law, their answer was required within 45 days, but no answer has yet been received.

Therefore we can report that **in Givon Prison alone, 61 detainees have been held for over a year.**

Details of the illegal residents detained in Givon Prison at the end of 2011:³

A citizen of Togo has been detained since 2004.

¹ Data at the MOI website is updated till the end of November 2011 and according to MOI officials at parliament meetings, 3,000 additional asylum seekers entered Israel during December 2011 :

<http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/dec2011.pdf>

² <http://www.ynetnews.com/articles/0,7340,L-3953573,00.html>

³ The data is mainly based on the prison authorities list of detainees from September 18th, 2011.

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A citizen of Guinea has been detained since 2006.

3 people have been detained since 2007:

6 people have been detained since 2008:

21 people have been detained since 2009:

29 people have been detained since 2010:

Out of 275 detainees in Givon Prison, 61 were already in detention at the end of 2010.

A citizen of Togo had been detained for over seven years

Ibrahim Amabel Amogo (Detainee no. 54920) is a citizen of Togo who had been detained for over seven years, since April 18, 2004 until October 31, 2011. Upon his arrest, Mr. Amogo asked for asylum, a procedure that lasted several years until his request was rejected. Over three years ago Mr. Amogo had requested to return to his home country, but he was unable to do so due to lack of proper documents and the absence of any diplomatic representation of Togo in Israel. Just toward the end of 2011, after numerous requests sent by the Hotline for Migrant Workers, the Administrative Tribunal realized that Mr. Amogo's chances of obtaining proper documents are higher if he is released from detention; his release was then granted on NIS 10,000 bail. Since Mr. Amogo was detained for so long, no one can assist him in collecting such a high bail. Hotline for Migrant Workers requested to lower the bail, and in tandem, the MOI requested to cancel the release decision in order to review Mr. Amogo's identity. The tribunal agreed to lower the sum to NIS 1,000 and on October 31, 2011, he was released from prison.

In its yearly report, the Israeli Public Defender also refers to the extended detention of asylum seekers, stating:

"In Givon Prison, one of the minor detainees has been in the facility for upwards of five months. A number of the detainees complained that they have been imprisoned for a long time, about two years. Some of the detainees also complained that they were detained for a number of months in the prison and had yet to be brought before a judge. On the side of caution, we wish to point out that in the limited framework of the official visit, the auditors were unable to examine the legal documents pertaining to the detainees and to utilize the inspection concerning this matter. Nevertheless, we wish to point out that the detention of some of the detainees, especially the minors among them, for

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*over the 60 days prescribed in the Entry into Israel Law and even longer periods of time, raises the need to examine whether the use of imprisonment is proportional and places enough importance on the right to freedom."*⁴

Condition of Detention of Asylum Seekers

In their annual imprisonment conditions report, the Public Defender describes the situation of foreigners in the Israeli prisons as follows:

*"The population of the detainees is characterized by a high turnover rate. Some of the detained remain in detention facilities for only a short period of time, either because they are found to be entitled to receive legal status in Israel, or there is no evidence compelling the need to detain them beyond the 60 days allowed by the Entry into Israel Law. Indeed, a significant portion of the detainees receive permits to stay in Israel, referring mostly to Sudanese and Eritreans who are entitled to collective group protection status (In the Saharonim facility there is a ratio of 70% who receive permits versus 30% who are deported). However, the public defender encountered a number of detainees who were not entitled to permits allowing them to stay in Israel and continued to remain in the prison facilities for extended periods of time, sometimes for over a year. It should be emphasized that aside from representatives of the Hotline for Migrant Workers, representatives of the Red Cross, Ministry of Interior, the Legal Aid department, the Education Ministry, and at times representatives of the United Nations, visit the detention facilities."*⁵

The Public Defender describes the conditions in Givon prison as follows:

"In the Givon Prison, the living quarters for a detainee are extremely small (2.3 to 2.9 square meters per detainee) and the level of maintenance and upkeep in the cells is very poor. The women and minors who are detained complained that there are cockroaches in the wing, especially in the yard and on the beds. The cells where the minor detainees are held contain only basic equipment and are quite minimal. They do not contain a television, table, or chairs. In addition, the cells do

⁴ Israeli Public Defender Yearly Imprisonment condition Report, August 2011:
<http://www.justice.gov.il/NR/rdonlyres/87763C09-FBC3-46A6-A885-B5557CB25C3E/0/Doch20092010.pdf>.

page 68

⁵ Ibid, page 67.

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not include built-in toilets and with the exception of long and narrow windows covered in dense bars and located in the upper part of the room, there are no additional openings for ventilation. The detainee women complained that they cannot use the ventilators that are in their rooms because the fans create noise that disturbs them to a great extent. People of the public defender's office were under the impression that their complaints are justified and that the fans create a strong noise that is unbearable, such to the extent that their use is minimal and it was observed that it is very hot in the cell. The minor detainees complained about the size of their yard (very small and includes all of the minors that are staying in prison) and that they are suffering from the intensity of the sun's rays and from the heat in the yard, which is not ventilated or cooled and is built out of concrete".⁶

Asylum Seekers detained in Regular Prisons with Criminals

(Dekel Eshel And Haela Prisons)

Several dozens of asylum seekers are detained in Dekel, Eshel and Haela prisons, near Beer Sheva, together with Israeli criminals, for long months.

The Hotline for Migrant Workers volunteers visit these detainees who report more difficulties than other detainees: The guards beat them and sometimes tie them for a day or two. The only way to avoid violent conflicts with the criminal detainees is to have no contact with them and the detainees feel threatened by the criminals.

Representatives of the UNHCR and the Red Cross manage to visit those prisons only once every three to four months.

According to numerous detainees in criminal prisons, it is very common for prisoners to supplement their free (but substandard) meals with additions bought in the prison's cafeteria or even replace all the meals with bought food. But asylum seekers do not have money and therefore do not have enough food to eat.

The Public Defender Office report describes the conditions in the Dekel Prison, stating: "*during the visit, representatives from the Public Defender's Office talked to a number of prisoners that arrived to Israel from African countries and are held in detention due to their lack of legal status in Israel,*

⁶ Ibid, page 69.

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those in Wing 4 which is used for detainees, and those in Wing 13 which is used for prisoners. From the conversations with the imprisoned, and from the information that was passed on by the wardens who accompanied the official visit, it became clear that the foreign citizens imprisoned at the prison were transferred from the Saharonim detention facility after being labeled as "trouble makers". Different reasons for such included: protest activity carried out at the Saharonim facility, "talking back" to judges in court, etc. The foreign citizens complained of their imprisonment at a facility intended for prisoners convicted of criminal offences and of their distancing from the surroundings of their fellow refugees. Some of them claimed that they were in prison for a long time, without seeing a horizon to a change in their status. Representatives of the Public Defender's Office came under the impression that the great frustration that those prisoners feel creates a likelihood for conflict with the prison staff. Detention of these foreign citizens, who did not commit any criminal offences, in a prison intended for criminals, while separating from the company of other foreigners, arouses the hardship and it is advisable that such practice be avoided whenever possible. This situation is grave, especially if there is truth to the claim that there is no sufficient inspection of the continuation of the stay of those foreigners in the prison.⁷

Reviewing the reasons why asylum seekers are detained in these prisons indicates that many of the detainees were sent there after attempting suicide in Saharonim. Others were transferred because they attacked someone in Saharonim or because they were attacked by someone else.

Since we were not able to obtain official data from the prison authorities, we would like to refer to a group of nine asylum seekers that HMW's volunteers met at Dekel Prison on January 25, 2011 and a group of 12 asylum seekers that they met in Eshel Prison on January 26, 2011.

Of these 21 detainees in Dekel and Eshel, 12 cannot be deported since they are under temporary group protection (seven are Eritreans, four are from Sudan, and one is from Ivory Coast). Another detainee is from Chad, a country that Israeli has not deported to for a long period of time due to lack of diplomatic representation and technical difficulties. We have been unable to communicate well with all of them, but based on the information that we gathered:

6 were transferred from Saharonim after attempting suicide.

⁷ Ibid, page 68

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2 were transferred after they were badly attacked by others in Saharonim.

1 was transferred after he tried to escape from Saharonim.

The rest did not know or did not want to tell us why they were transferred to a criminal prison.

It is not possible to meet all of the detainees in every visit, but at least three of them were still in criminal prisons seven months later, in July 2011. In September 2011, at least nine were still detained although they were transferred to Saharonim prison.

An Eritrean detainee who was transferred to Eshel criminal prison due to a suicide attempt

One of the detainees who were held in a criminal prison, escorted by the Hotline for the last year, is of Eritrean origin, Y. G. K., who entered Israel from Egypt on September 11, 2010. Y. was transferred to Eshel criminal prison as a result of his first suicide attempt shortly after his arrest. On July 13th, 2011, Y. described the conditions in Eshel Prison to the Administrative Tribunal judge Adv. Dan Liberty as follows:

"When I was in the prison I passed a lot of troubles with the Hamas prisoners. I was locked in a small room for four month. Two months in section 12 and four months in the small room in Eshel Prison".

Based on this, one can conclude that Y. was detained for at least six months with criminal prisoners at Eshel Prison, before he was released by HMW volunteers on a NIS 2,000 bail. On July 6th, 2011, Y. was invited to the MOI office, refused to sign a traveling document to Ethiopia and was arrested again, and this time, sent to Givon prison in Ramle. Due to his numerous suicide attempts, the Hotline volunteers kept on looking for ways to persuade the Administrative Tribunal to release him again. In his decision from August 21, 2011, the Judge Dan Liberty wrote, referring to Y.: *"Even a suicide attempt or other extreme acts do not create a pretext for release; it merely puts an extra burden on the prison wardens' work of watching the detainee"*.⁸

⁸ Neshet Talila, " Judge overturns order to release illegal immigrant for treatment", Haaretz, August 25th, 2011: <http://www.haaretz.com/print-edition/news/judge-overturns-order-to-release-illegal-immigrant-for-treatment-1.380533>

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One can estimate that the long detention in a criminal prison had a negative impact on Y. and contributed to his decision to try and terminate his life again and again. Y. was still held in Givon prison in January 2012.

During January of 2012, HMW located nine foreign detainees in criminal prisons, but there might be more whom we were unable to locate:

Two detainees in Haela Prison: A Sudanese who attempted suicide and a citizen of Ivory Coast with serious mental problems.

Two detainees in Eshel Prison: An Eritrean with serious mental problems and a citizen of Guinea. HMW was unable to establish why the Guinean was transferred to a criminal prison.

Five detainees in Dekel Prison: Four citizens of Mali who refuse to be deported to their country of origin and are awaiting a forcible return, and a citizen of Cameroon who claims to be from the Central African Republic.

Judicial Treatment of the Detainees

About the Judicial treatment of the asylum seekers detained in the various prisons the Public Defenders states:

"In the Saharonim facility, the official auditors came under the impression that the number of judges and the duration of their work hours do not correlate with the number of detainees and that the courts are struggling to deal with the heavy load of work (approximately 100 hearings per day). It should be stressed that a number of buildings were recently designated for the use of the custody courts. This is a significant improvement, since in the past the courts would hold the hearings in vacant living quarters, seated on metal bed frames. With this, we find it to be necessary to mention that during the visit, representatives of the Public Defender's Office were exposed to the improper conditions of confinement of refugees while waiting for judicial hearings or doctor's visits. The detainees are held many at a time in overcrowded "waiting cages"- narrow and long hallways similar to a cage where they are seated on the floor. We are convinced that this type of confinement is not fitting, even if used for a short period of time.

It became evident in conversation with detainees at Givon Prison that they are unaware of their rights and legal status. Detainees are brought before the custody courts with no legal representation, and the detainees often do not understand the proceedings or what is said to them.

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When the official auditors entered one of the cells, every one of the detainees reached out for the protocols of the latest hearing regarding their case and asked to know that was written in the protocols, what will be his in his fate and begged for assistance, stating that there was no one to help them".⁹

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⁹ Ibid, page 71.