

# **DETENTION OF MIGRANTS AND ASYLUM SEEKERS IN ISRAEL**

**Annual Monitoring Report – 2019**



*Hotline for Refugees and Migrants*

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### About the Hotline for Refugees and Migrants

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

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Photo by Yair Meyuhas



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## **Acronyms and Abbreviations**

**HCJ - High Court of Justice**

**The Tribunal - The Detention Review Tribunal**

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

**The Immigration Authority/PIBA - Population, Immigration, and Borders Authority**

**IPS - Israeli Prison Services**

## *Introduction*

For the fifth year in a row, the Hotline for Refugees and Migrants (HRM) is publishing a monitoring report on the conditions in immigration detention in the facilities designated for undocumented migrants and asylum seekers. In 2019, detention and incarceration continue to be a central tool in Israel's approach toward undocumented migrants within its borders. This year witnessed a drop in the number of detained asylum seekers. As such, this report examines the identity of the detainees held in the various detention facilities, some of them held for many months or even years, and which laws justify holding them in detention.

In 2019, the major trends identified by the HRM were: detention of those denied entry to Israel and infringements of their rights, preventing those who have been denied entry from applying for asylum, violence by Immigration Authority inspectors toward detainees, and detention of families with children ahead of their deportation from Israel. In 2019, the Immigration Authority began focusing its efforts in detaining school-aged children, a population that was previously spared from detention and deportation. This year, we also decided to pay particular attention to the flaws in judicial oversight within the Detention Review Tribunal (The Tribunal), and therefore dedicated an entire chapter to these failings. The report describes major trends and detainees' central complaints as they were conveyed to HRM representatives.

We reiterate our central recommendation to develop a policy that would ensure that detention is used only as a last resort to ensure the departure of individuals illegally residing in Israel. Until such a policy is developed, children should not be held in detention, migrants whose lives may be at risk in their country of origin must not be deported without being able to apply for asylum in Israel, victims of human trafficking and modern-day slavery must not be deported, and external oversight must be put in place to ensure an end to brutality of Immigration Authority inspectors toward migrants during their arrest and deportation from the country.

### **Methodology**

This report integrates 13 testimonies from detainees, nine Freedom of Information requests, and the processing of 5,241 transcripts from hearings of the Tribunal. Most

of the responses of the Immigration Authority to the Freedom of Information requests were received over a year after being sent, despite repeated reminders. Since some of the responses are meaningful and still relevant, we decided to include in this report answers to requests sent in 2018, which we received only after the publication of the annual monitoring report for 2018.



Photo by Avshalom Shoshani



## Background

The status of foreigners in Israel is determined by four laws: The Law of Return,<sup>1</sup> the Citizenship Law,<sup>2</sup> the Entry to Israel Law,<sup>3</sup> and the various versions of 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 eligible to receive Israeli citizenship. Under the Citizenship Law, a person can gain citizenship in Israel according to the Law of Return or through family reunification. The status of all other migrants in Israel is determined by the Entry to Israel Law and the Anti-Infiltration Law. Israel does not see itself as a destination country for migration and government officials have stated multiple times that the only avenue for migration to Israel is through the Law of Return. Therefore, any migrant in Israel who has no Jewish lineage or is not married to a person with such lineage, can obtain legal status only for short periods of time. Migrants who entered Israel as tourists or migrant workers and overstay the period of residency permitted by their visa are detained under the Entry to Israel Law. Since June 2012, migrants and asylum seekers who enter Israel irregularly through the border with Egypt are detained and imprisoned under the Anti-Infiltration Law and its amendments.

### The Identity of Those Held in Detention Facilities for Undocumented Migrants

According to the definitions provided by the Population and Immigration Border Authority (PIBA), there are four types of migrants in Israel, some of whom may end up in detention facilities for undocumented migrants:<sup>5</sup>

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<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 2019", March 2020, p. 36-37. (Hebrew)

- "Tourists": in 2019, 58,200 migrants resided in Israel who entered as tourists through Ben Gurion Airport and remained—77% of them are from former Soviet Union countries.<sup>6</sup> The common assumption is that most of them are relatives of people entitled to immigrate to Israel under the Law of Return who gained citizenship in Israel.
- "Foreign Workers": in 2019, there were 101,992 migrant workers with permits allowing them to work in the agricultural, care-giving, or construction sectors. Most of them are from Thailand, the Philippines, India, Moldova, Sri Lanka, or China. Only men are employed in the construction sector. 97% of agricultural workers are men, and 94% of professionals brought to Israel because their specialty cannot be fulfilled in Israel are men. In the care-giving sector, on the other hand, there is a clear female majority of 84%.<sup>7</sup> These workers arrive in Israel legally, some of them under bilateral agreements between Israel and their country of origin. These migrants are allowed to work in Israel for 63 months, but at times they lose their legal status when they decide to leave their employers for various reasons, including exploitation and harsh working conditions, or when employers fire them. Many women lose their legal status in Israel if they become pregnant. In early 2019, there were 17,484 migrant workers who lost their legal status but had not left Israel, among them 11,434 (70.4%) people employed in the care-giving sector, in which most employees are women.<sup>8</sup>
- "Infiltrators": At the end of 2019, there were 31,547 migrants and asylum seekers who entered Israel through the border with Egypt over the past decade and are pejoratively labeled "infiltrators" by Israeli authorities, although international law allows individuals to cross borders illegally in search of safe haven. 91% of these individuals are asylum seekers from Eritrea and Sudan, and of them, 63% applied for political asylum with their requests still pending.
- "Asylum seekers": 9,842 migrants applied for asylum in 2019. 43.7% of them are from Eritrea and Sudan and 33% are from eastern Europe. The total number of asylum seekers residing in Israel whose asylum applications have still not been adjudicated stands at 34,624.<sup>9</sup>

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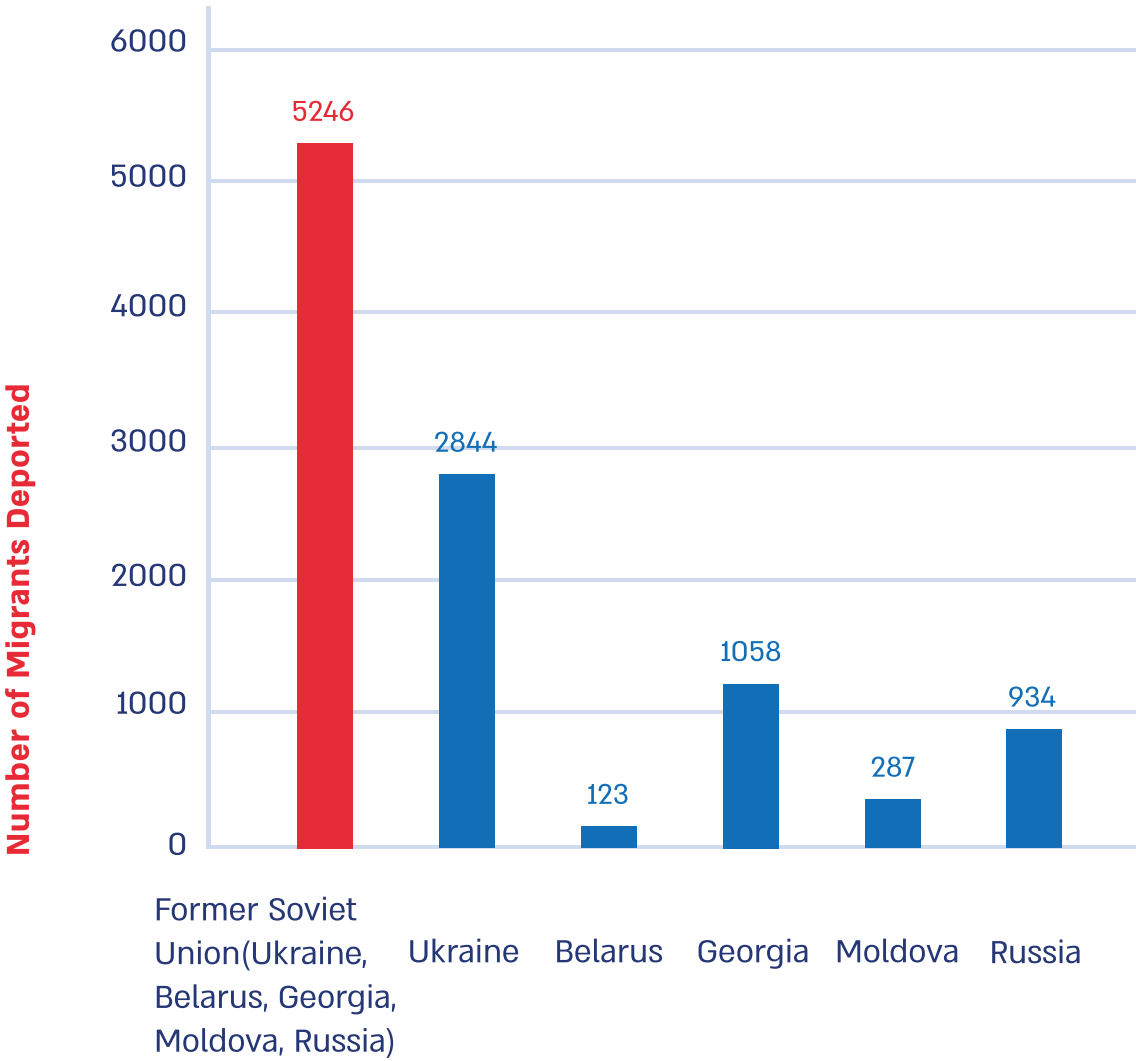
<sup>6</sup> Ibid., p. 25.

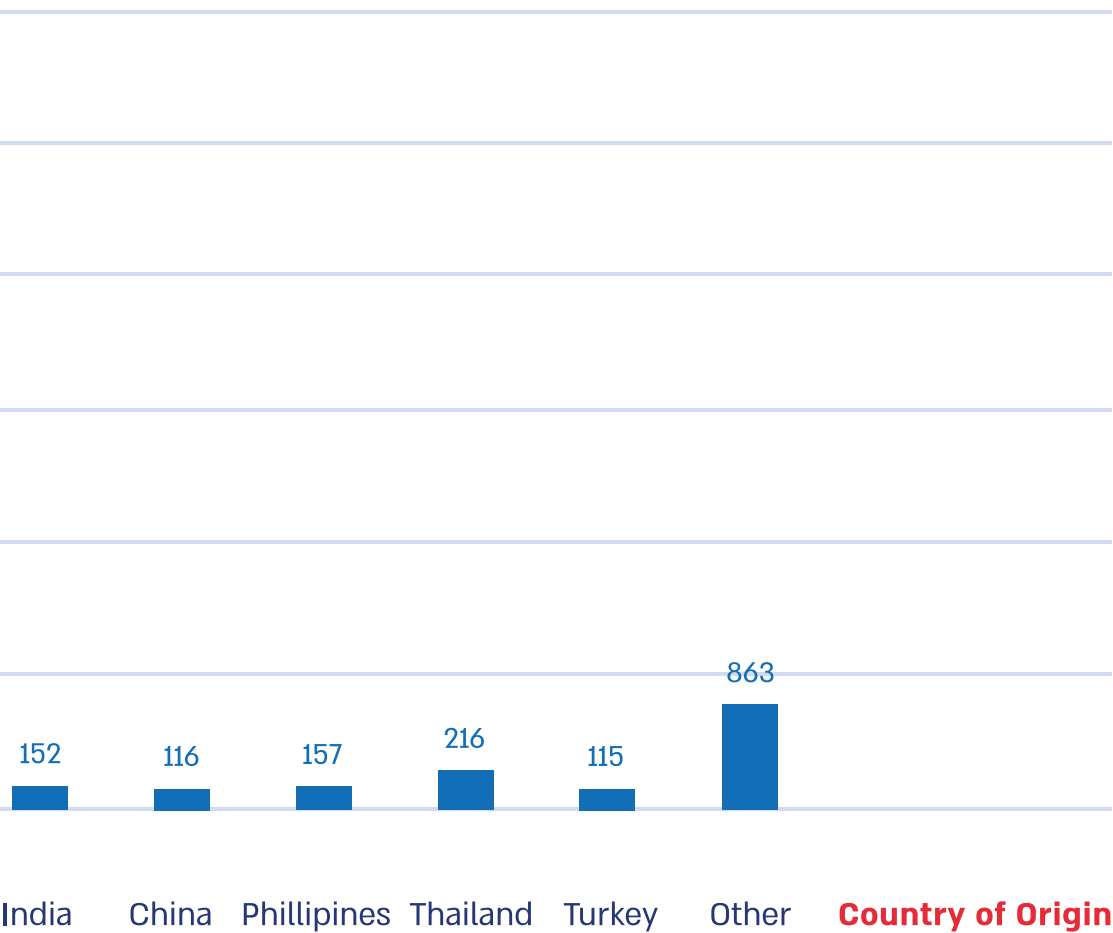
<sup>7</sup> Ibid., p. 24.

<sup>8</sup> Ibid., p. 20.

<sup>9</sup> HIAS, "0.06% – The Numbers Speak for Themselves," August 2020.

Migrants Arrested and Deported According to Their Country of Origin





In 2019, PIBA reported that 6,694 undocumented migrants were arrested and deported from Israel.<sup>10</sup> However, if we add up the number of deportees based on country of origin, the data show that in 2019, 6,865 undocumented migrants were deported.<sup>11</sup> The gap stems from the difference in reporting by the Immigration Authority, which declares that the data on deportations is dynamic and may be retroactively updated. In any case, the number of migrants arrested and deported in 2019 was lower than the number of deportees in 2018 (7,957 migrants), but higher than in years prior: 5,841 were arrested and deported in 2017, 3,221 people in 2016, and 3,116 migrants in 2015.<sup>12</sup>

Number of Migrants Deported	Year
6694	2019
7957	2018
5841	2017
3221	2016
3116	2015

6694  
According to Status

6865  
According to  
Country of Origin

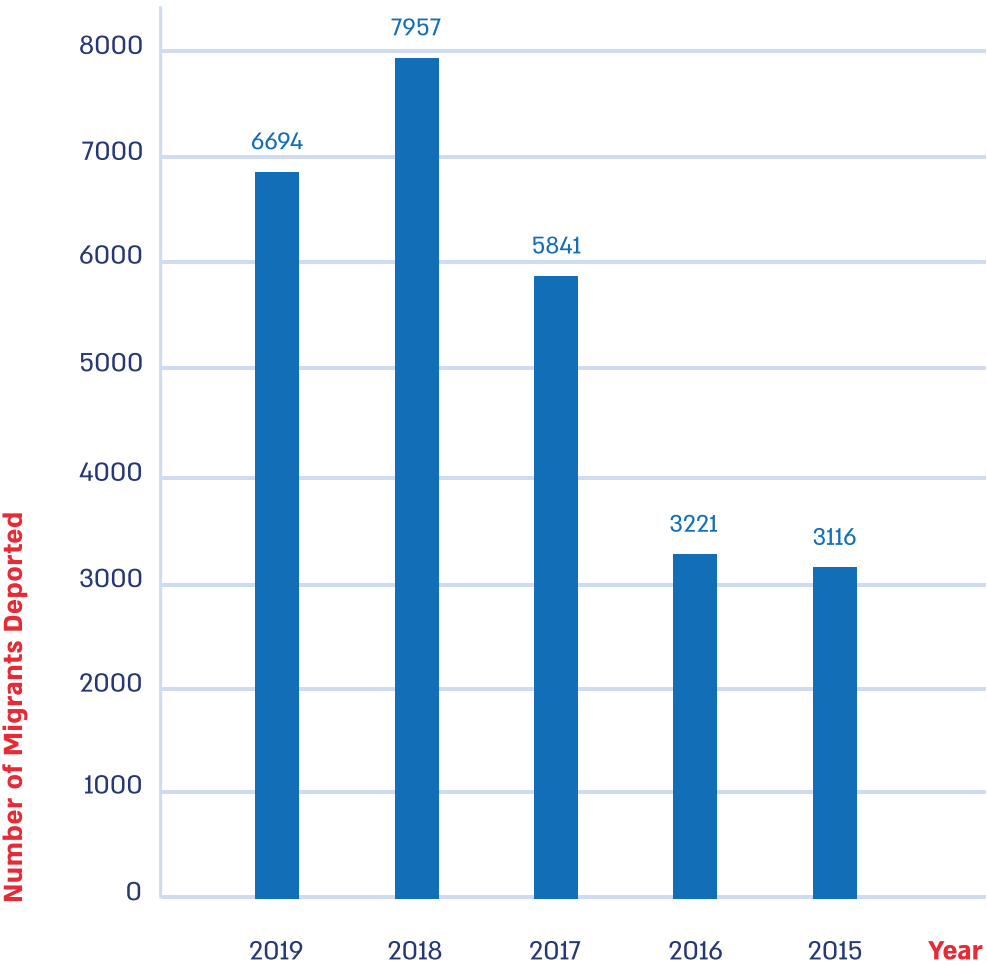
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<sup>10</sup> Fn. 5, p. 26.

<sup>11</sup> Ibid., p. 27.

<sup>12</sup> Ibid.

Number of Migrants Deported Along the Years





As in 2015–2018, most of the deportees in 2019 were from Ukraine (2,844) and Georgia (1,058). This year, 934 of the deportees were Russian citizens.<sup>13</sup> In our assessment, most of them arrived in Israel at the encouragement of organized networks whose purpose is to bring workers to Israel while bypassing mechanisms regularizing the work of migrant laborers in Israel and the quota for employment permits. These networks encourage the workers to apply for asylum, which can allow them to remain in Israel while the application is reviewed. In some cases, it appears that the workers fall victim to human trafficking and are being held in slavery-like conditions; the high numbers of the deportees indicates that Israeli authorities do not exert enough efforts to examine whether the cases need to be referred to the Israeli Police for examination of possible human trafficking offenses before the migrants are deported from Israel.<sup>14</sup>

In the database of rulings of the Tribunal there are 5,241 transcripts of hearings held for detained migrants in 2019. Based on the detainee numbers that appear in the transcripts, our analysis shows that those 5,241 hearings were held to deliberate on cases of 3,238 detainees. In 1,503 of the transcripts for unique detention numbers, the word “the [female] detainee” (haMuhzeket) appears, indicating that the hearing was held for a female migrant. This identification is possibly not 100% precise since Tribunal adjudicators often duplicate transcripts through the “save as” function, and at times forget to delete phrases from prior transcripts. However, Immigration Authority data, detailed later in the report, bolsters our assessment that about half of the detained and deported migrants from Israel are women.

According to PIBA data, the number of people denied entry to Israel in 2019 stood at 23,312 people, about 3% more than the number of such individuals in 2018 (22,495 people). In 2017, the number of people denied entry stood at 19,556, while in 2016, the number was 18,392 people.<sup>15</sup> Those denied entry from visa-free countries make up a major share of those refused entry – in 2019, Israel denied the entry of 6,407 citizens of Ukraine and 6,159 citizens of Russia, who together make up about 54% of those denied entry in 2019.<sup>16</sup>

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<sup>13</sup> Ibid.

<sup>14</sup> HRM, “Through Hidden Corridors: New Trends in Human Trafficking which Exploit the Asylum System in Israel,” September 2017.

<sup>15</sup> Ibid.

<sup>16</sup> See fn. 5, p. 30.



## Laws Regulating the Detention of Migrants

The detention of migrants in Israel is regulated in the provisions of the Entry to Israel Law and Anti-Infiltration Law, both discussed at length in the 2015 annual monitoring report,<sup>17</sup> as well as in the 2018 annual monitoring report.<sup>18</sup> The latter report details the various amendments to the Anti-Infiltration Law and describes the legal proceedings that resulted in the shuttering of the Holot Facility.

Detention is the dominant tactic in Israel's policies concerning immigration to Israel. Detention and incarceration serve as a method of managing and deterring migrants and asylum seekers from staying in Israel for long periods. However, 2019 witnessed a continuation of the trend of reduction in the number of detained migrants, which began in 2018 with the closing of the Holot Facility and abrogation of the plans to deport asylum seekers to third countries, and following HCJ ruling 14/1892 which set a timeline for decreasing overcrowding in IPS facilities.<sup>19</sup> While in 2015, about 5,000 migrants and asylum seekers were held in immigration detention, in 2019, on average, at any given moment, there were fewer than 200 migrants in detention.<sup>20</sup>

## Immigration Detention Facilities

In 2019, Israeli authorities operated three detention facilities to hold migrants and asylum seekers: Saharonim Prison on the border with Egypt, Givon Prison in Ramle, and the Yahalom Detention Facility at Ben Gurion Airport. In the past, migrants not convicted of any crime were also held in criminal prisons such as Nitzan, Eshel, Dekel, HaElai, and Ohalei Keidar, to punish them with solitary confinement or due to the need to isolate them or keep them under observation. This detention occurred despite the legal prohibition on holding migrants not accused of any crime together with criminal prisoners. However, in 2019, we have not been made aware of any cases of migrants held under administrative detention being held in criminal prisons.

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<sup>17</sup> HRM, "Immigration Detention in Israel: Yearly Monitoring 2015," February 2016.

<sup>18</sup> HRM, "Immigration Detention in Israel Annual Monitoring Report – 2018," April 2019.

<sup>19</sup> Ibid.

<sup>20</sup> This is the assessment of the HRM, due to inability to obtain a total number from Israeli authorities on this matter.

### Saharonim Prison

Located in the Negev, next to the border with Egypt, Saharonim holds only men. The facility was built in 2007 to detain African asylum seekers who entered Israel through the Egyptian border. Until June 2012, Saharonim had eight wings in which detainees were housed in tents, each of which could hold up to 250 detainees (2,000 altogether). In June 2012, six more wings were added, replacing the old wings. Since that renovation, regulations allow holding up to 1,000 detainees in Saharonim Prison.<sup>21</sup> However, due to the reduction in the number of those detained and the cancellation of the deportation plan (see chapter 5 below for more),<sup>22</sup> some of the wards were converted to house Palestinians who entered Israel without a permit (who are termed "illegal residents"), transferred from the nearby Ktziot Prison due to the implementation of the HCJ ruling in case 12/1892.

In 2018,<sup>23</sup> 431 migrants were detained in Saharonim, of them 329 Eritreans, 47 Sudanese, and 55 citizens of other countries. During that year, no children under the age of 18 were held in Saharonim Prison. During 2018, 40 people "voluntarily" departed to other countries from Saharonim Prison, while 739 others were released into Israeli territory.<sup>24</sup>

In 2019, the number of detainees held in Saharonim Prison was further reduced. On May 10, 2019, Saharonim held 41 people: nine Sudanese, nine Ethiopians, seven Eritreans, four Ivorians, three Nigerians, three Chadians, two Ghanians, two Guineans, and two others whose nationality was not mentioned in the data provided by the Immigration Authority.<sup>25</sup>

In total, at the time, Saharonim held several detainees who had been in detention

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<sup>21</sup> Josh Breiner, "Prison Officials Warn: No Room to Jail Thousands of Asylum Seekers Who Refuse to Leave Israel," Haaretz, February 4, 2018.

<sup>22</sup> See fn 18, chapter 5.

<sup>23</sup> Only over a year after making repeated requests, on June 4, 2019, we managed to obtain the response of the Immigration Authority to a freedom of information request concerning the occupancy of Saharonim Prison in 2018. Due to the importance of the data, we will still present them in the report. It should be mentioned that while the Immigration Authority managed, even if with a significant delay, to provide data concerning the total number of detainees in Givon and Yahalom with a breakdown of the law under which they were held, such data were not provided concerning Saharonim. The Immigration Authority reported that "the data could not be pulled."

<sup>24</sup> Response of the Immigration Authority to the HRM, in accordance with the Freedom of Information Act, dated June 4, 2019.

<sup>25</sup> Ibid.

for over two years, 17 people for over a year, 26 individuals for more than six months, 33 for over three months, and 34 for more than two months. Specifically, one citizen of Ghana had been held for four years and three months,<sup>26</sup> a citizen of Liberia had been detained for three years and eight months,<sup>27</sup> and a citizen of the Ivory Coast had been detained for three years.<sup>28</sup>

#### Givon Prison

Located in Ramle, a small city not far from Tel Aviv, Givon Prison opened in 2004 and is considered part of a larger compound of prisons that includes Ayalon, Massiyahu, Neve Tirtsa, and Nitzan Prison. The prison holds Israeli citizens who have been convicted of criminal offenses for which they have been sentenced for up to five years, as well as migrants who stay illegally in Israel. The two populations are held in separate wards. Givon Prison holds women as well, mainly migrant workers, in another separate ward. According to a July 22, 2018 response from the IPS to a Freedom of Information request, 88 migrant detainees were held there at the time. Seven of them had been detained for longer than six months (8%), and eight had been detained for over a year (9%). Although the information was requested in the Freedom of Information request, the IPS did not clarify in the response how many of the detainees were women and how many were minors. The IPS mentioned in its response only the ongoing detention period and did not take into account prior periods of incarceration, thus making it impossible to know if these detainees were cumulatively held for longer periods.

The entire facility can hold 280 people, while in the foreigners' wards, 128 people can be detained. 69 can be detained in the men's ward and 59 in the women's ward.<sup>29</sup>

According to a response from the Immigration Authority dated from June 5, 2019 to a freedom of information request, at the time, 101 migrants, of them 57 men and 44 women were held in Givon. At the time, no children were held in the prison.

16 of the detainees had been held for over two months straight (citizens of Brazil, the United States, Jordan, Eritrea, Ghana, Ethiopia, Egypt, Nigeria, Ukraine, and Russia). At the time, 12 of the detainees had been held for over three months straight (citizens of Brazil,

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<sup>26</sup> The man has been held in detention since February 1, 2015.

<sup>27</sup> The man's last detention period began on September 7, 2015.

<sup>28</sup> The man has been held in detention since May 4, 2016.

<sup>29</sup> According to an email from Dr. Anat Horowitz at the Public Defender's Office, the Ministry of Justice, to the HRM, dated May 21, 2020.

the United States, Eritrea, Jordan, Ghana, Ethiopia, Egypt, and Nigeria). Two detainees had been held for over a year, with one of them spending over two years in detention.

Although the information was requested in the Freedom of Information request, the Immigration Authority did not mention in its response how many of the detainees for prolonged periods were women and how many were minors.<sup>30</sup>

In a response to a Freedom of Information request the HRM filed in 2019, the Immigration Authority reported that in 2018, 180 of the detainees in Givon were released into Israel, of them 33 Sudanese citizens and 28 Eritrean citizens who could not be deported due to Israel's non-removal policy toward these nationals. Out of the 119 detainees who were released who are from countries to which Israel does carry out deportations, 39 were citizens of Ukraine (18 men and 21 women), while 50 men and 29 women were released from detention into Israel without the Authority mentioning their country of origin.

In total, in 2018, 123 detainees were held in Givon Prison under the Anti-Infiltration Law (97 Eritreans and 26 Sudanese) and 2,811 were detained under the Law of Entry to Israel.<sup>31</sup>

Out of the 2,811 migrants from countries whose citizens do not enjoy protection from deportation, about 4%, of 119 people, were released into Israel.

This year, as in each year since 2016, the HRM received repeated complaints from detainees about bed bugs at Givon Prison, which caused particular anguish to the babies detained in the facility.

### **Detention of Children in Givon Prison**

The Freedom of Information reply that was received in 2019 for the year 2018 showed that Givon Prison held 27 children at the time, of them 18 boys, eight girls and another child whose gender was not mentioned. Seven of the children were citizens of Ukraine, six were citizens of Ethiopia, four citizens of the Philippines, three Nigerians, two citizens of Georgia, and two Indian nationals. The countries of citizenship of three other children were not mentioned.

In total, during 2018, 16 children were deported from Givon Prison, 12 of them boys and four girls. Their ages were not mentioned. Two boys and a girl were deported

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<sup>30</sup> Response of the Immigration Authority to the freedom of information request of the HRM, dated June 5, 2019.

<sup>31</sup> Ibid.



שירות בתי  
בית סוהר



to Ukraine, one boy was deported to Ethiopia, two boys were deported to Georgia, two boys were deported to India, a boy and two girls were deported to Nigeria, three boys and a girl were deported to the Philippines, and two boys were deported to an unknown country.<sup>32</sup>

### **Yahalom Detention Facility**

The Yahalom Detention Facility, located inside Ben Gurion Airport, is the only detention facility that is managed by the Ministry of Interior and not by the IPS. The facility was designed to hold migrants and tourists whose entry to Israel is denied for several days, until they can be deported to their home country. However, hundreds of cases have been documented in which migrants and their children were detained in Israel, transferred to Yahalom ahead of deportation, and were held there for weeks or even months before being put on a plane. To the best of our knowledge, families with children were not held at Yahalom for prolonged periods in 2019. However, the detention conditions in the facility, even for short periods, do not meet the conditions set in the law due to small spaces per detainee in about half the cells, and the lack of ability to schedule routine visits to the yard. Except for attorneys representing clients detained there, HRM representatives do not have access to the Yahalom Facility.

According to information provided by PIBA in 2017 in response to the Freedom of Information request, Yahalom had ten rooms of different sizes, including three rooms designed for families. There are total of 56 beds at the facility.<sup>33</sup> **According to information provided by the Immigration Authority to a Freedom of Information request in 2019, it appears that changes were made to the facility, and it now includes nine cells and a total of 52 beds.** The sizes of the rooms range from 9.98 sq. meters for a room with four beds, to 25.52 for a room with nine beds, with a toilet and shower.<sup>34</sup> According to information provided by the Immigration Authority, five of the nine cells **do not meet the requirements set by the HCJ with regards to sufficient living space for detainees.**<sup>35</sup>

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<sup>32</sup> Ibid.

<sup>33</sup> See fn. 18, p. 8.

<sup>34</sup> See fn. 24.

<sup>35</sup> In accordance with HCJ ruling 1892/14 the Association for Civil Rights in Israel vs. The Minister of Internal Security and others, dated June 13, 2017, the minimal living space per detainee must be four square meters for rooms without a bathroom and shower, and 4.5 square meters for rooms that do have a toilet and shower.

**There are no closets in the cells and the private belongings of the detainees are held in a locked storage room that is watched by cameras.** According to the Immigration Authority, upon being received in the facility, the detainees are given a "package for those being held," which includes a track suit, socks, underwear, toothpaste and a toothbrush, a towel, soap, shampoo, and a set of linens for one-time use.

Some of the detainees reported that they did not receive this package, but they also did not ask for anything. Others, who asked for these items, reported that the items were found in their cells and the guards directed them to find them. Yahalom does not have a commissary, but there is a soda machine in the yard.

In 2019, for the first time, we were able to receive a response from the Immigration Authority concerning the conditions at the Yahalom Facility and the number of detainees held in it, broken down by country of origin.<sup>36</sup> According to this response, which pertains to the period between January 2018 and the end of March 2019, without a monthly or annual breakdown, 11,465 people from 82 different countries passed through the 52 beds in Yahalom. Most of the detainees were citizens of Ukraine, Georgia, and Moldova. However, there were also dozens of western Europeans, Americans, and Australians.

Among the detainees in Yahalom during this period were 4,696 women and 370 children.

A significant improvement occurred with regards to the periods of detention in the facility: only 11 of the detainees held in Yahalom during this period were held for longer than a week: seven of them citizens of Georgia and four others whose nationality was not mentioned.

50 of the detainees were moved from Yahalom to other prisons, among them 13 Sri Lankan nationals (who were represented by the HRM and whose case was detailed in the 2018 monitoring report), 30 citizens of Georgia, two citizens of Eritrea, and five others.

The Yahalom Facility is comprised of nine cells holding 52 beds in total.

**Photo courtesy of the Israel Prison Service**

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<sup>36</sup> See fn. 24.



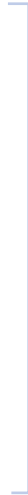
19 Detention of Migrants and Asylum Seekers in Israel

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Sq. Meters per Detainee in a Cell	Number of Detainees in a Cell	Room
2.49	4	2
3.14	8	3
3.66	12	1
2.83	9	108
4.09	6	106
4.55	4	104
4.62	4	105
5.13	4	103
14.85	1	107

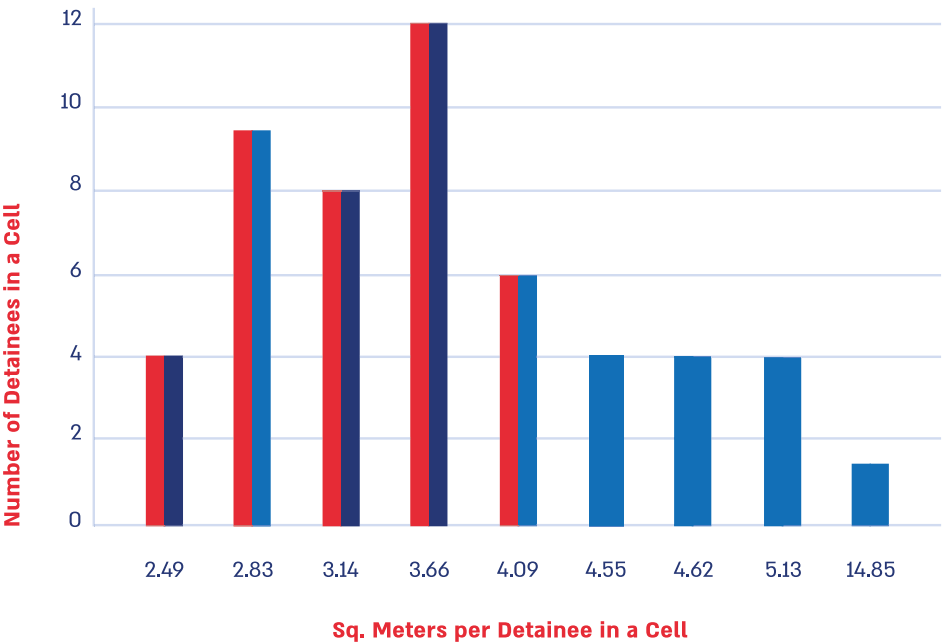


These **three cells** have a shared shower room and bathrooms, whose size is 14 square meters. The detainees are forced to call the guards to exit to the bathroom and showers.



**Six cells** which include toilet and shower.

Living Space per Detainee in Yahalom Facility<sup>37</sup>



- Three cells which do not include toilet and shower.
- Six cells which include toilet and shower.
- The columns marked in Red indicate cells that do not meet the requirements set by the HCJ with regards to sufficient living space of detainees.

Minimal Living Space in Immigration Detention - Yahalom Facility  
In accordance with HCJ ruling 1892/14 ACRI v. the Minister of Internal Security and others, dated June 13, 2017, the minimal living space per detainee must be 4 Sq. Meters for room without b

<sup>37</sup> Response of the Immigration Authority dated June 2, 2019 in response to a Freedom of Information request filed by the HRM.

The Immigration Authority provided two different sets of data in response to Freedom of Information requests regarding the number of detainees held at the Yahalom Facility during 2019. Comparing those responses raises some questions.

A May 19, 2019, response from the Immigration Authority started that during 2018, the internal systems of the Authority registered the reception of 3,041 detainees at Yahalom. Of them, 103 detainees were transferred to other facilities and 2,573 were deported from the country. In another response, which was provided two weeks later, the Authority provided data on detainees held the Yahalom Facility in 2018 and the first three months of 2019, in a manner that does not break down the data by year.<sup>38</sup> In the additional response, the Authority reported that 11,465 detainees were held in Yahalom during those 15 months, almost four times the numbers for 2018 alone. If the data are correct, this means that during the first three months of 2019 alone, 8,424 people were jailed at Yahalom, almost three times more than the entire number of detainees during the 12 months of 2018.

In any case, even if these data are accurate, and indeed 11,465 persons were jailed in Yahalom during 2018 and the first three months of 2019, this means that the percentage of migrants denied entry who were jailed in Yahalom was significantly reduced compared to prior years, and the Immigration Authority managed to place about 50% of those refused entry on return flights back to their countries of origin, before needing to resort to detaining them at the Yahalom Facility. This is compared to the detention of 96% of those refused entry in 2016, and 91.5% of such individuals in 2017.<sup>39</sup>

According to Immigration Authority data, not a single person who was denied entry to Israel was released into Israel following legal proceedings.<sup>40</sup>

Although an internal auditor is supposed to carry out inspections at the Yahalom Facility on behalf of the Immigration Authority, in 2019, not a single inspection was carried out.<sup>41</sup>

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<sup>38</sup> See fn 24.

<sup>39</sup> See fn 18, p. 8.

<sup>40</sup> Response of the Immigration Authority dated May 19, 2019, in response to a freedom of information request filed by the Hotline.

<sup>41</sup> According to a response of the Immigration Authority dated July 22, 2020, in response to a freedom of information request filed by the HRM, not a single inspection was carried out between 2018 to 2020.

## Children Denied Entry to Israel

The number of detained children is also unclear in data provided by the State.

While the response to the first Freedom of Information request reported that in 2018, 49 children were detained at the facility,<sup>42</sup> the response provided two weeks later, which also included the first three months of 2019, indicated that during this period, a total of 370 children were detained at the Yahalom Facility, seven (!) times more than the number of children detained throughout 2018.<sup>43</sup> If the data are accurate, this means that during the first three months of 2019, 321 children were jailed in Yahalom, six times more than the total number of children detained through 2018.

The Immigration Authority did not provide a breakdown of the countries of origin of the children detained in 2018, but did report that 28 of them were under the age of six. 23 were deported from Israel, and 11 were moved to other detention facilities (Givon Prison). None of these children were held in the facility for longer than a week.<sup>44</sup>

In data provided regarding the children detained during 2018 and the first three months of 2019, there is a breakdown of detainees' nationalities. Out of the 370 detained children, 117 arrived from Ukraine, 61 from Georgia, 58 children from Moldova, 51 minors from Russia, four from the UK, two from Sweden, two from the United States, one child from France, and one Australian child.<sup>45</sup>

Photo by Keren Manor

Photo by Yair Meyuhas

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<sup>42</sup> See fn 37.

<sup>43</sup> See fn 24.

<sup>44</sup> See fn 37.

<sup>45</sup> See fn. 24.



NO  
MIGRANTS

WE NEED ASYLUM!

need protection

protection

REF

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N7

138 Nf

## *Prolonged Detention of Migrants and Asylum Seekers*

In 2019, too, dozens of migrants spent multiple months in detention, at times exceeding a year, although the purpose of immigration detention is not to punish them, but only to hold them to facilitate their deportation from the country.

Examining the database of rulings handed down by the Tribunal shows that **during 2019, at least 24 migrants and asylum seekers were held in detention for a period longer than 18 months prior to their release or deportation.** As of the writing of this report, nine are still held in detention. At the start of 2019, at least 16 migrants and asylum seekers held in Israel were detained for a period longer than a year; at the end of 2019, there were at least 13 migrants and asylum seekers jailed for a period of over a year. The country whose nationals make up the largest group among those held for prolonged periods is Ethiopia. Nine Ethiopians were held in prolonged detention in 2019. In addition, three Chadian nationals, three Sudanese and three citizens of the Ivory Coast were jailed for prolonged periods during 2019.<sup>46</sup>

During 2019, at least two women were held in prolonged detention – two of them for periods longer than 20 months. One of the women, a citizen of Ethiopia is I. Z. She entered Israel in 2008. While residing in Israel, she applied for political asylum, and her request was rejected in 2012. In 2015, she married an Ethiopian refugee living in Australia and began a family reunification procedure with him, seeking to join him in Australia. Her efforts failed due to inability to obtain identifying documents from Ethiopia. As part of her efforts to obtain these documents, I. Z. turned to the Ethiopian embassy in Israel, which refused to provide her with any document other than a one-time travel document to be used only to return to Ethiopia. In June 2017, she was arrested for residing in Israel without a valid permit and was taken to detention.

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<sup>46</sup> During 2019, 24 migrants were detained for prolonged periods. They were identified as nationals of the following countries: nine citizens of Ethiopia, three citizens of the Ivory Coast, three citizens of Chad, three citizens of Sudan, two citizens of Ghana, two citizens of Guinea, two citizens of Liberia, and a citizen of Mali, a citizen of the United States, a citizen of Brazil, a citizen of Sierra Leone, and a citizen of Tajikistan.



Since I. Z. refused to return to her homeland – which she fled – she was considered to be a detainee who was “not cooperating with her removal” under the provisions of the Entry to Israel Law. During her time in detention, I. Z. hired the services of Attorney Michal Pomerantz, who turned to the RSD Unit and asked the Immigration Authority to reexamine I. Z.’s asylum claim. Ms. Pomerantz also reached out to the Voluntary Departure Unit at the Immigration Authority, asking it for assistance in the process of departure to Australia. These efforts proved unsuccessful, and after 21 months in detention, I. Z. called a friend in Israel, and told her that on March 1, 2019, inspectors of the Immigration Authority forcibly transferred her to Egyptian authorities across the southern border, from where she was directly deported to Ethiopia.<sup>47</sup>

The case of the second woman demonstrates how easy it is for migrants dealing with mental health problems to be forgotten in prison by the Tribunal and the Ministry of Interior: I. M. was identified in the monthly hearing transcripts as a citizen of the United States, but the transcripts of the hearings indicated that due to her mental health condition, the Ministry of Interior could not incontrovertibly identify her as a citizen of the United States, which would have allowed for her deportation from Israel. The Ministry of Interior turned to the diplomatic representative offices of various countries, attempting to identify her country of citizenship, but was unsuccessful. I. M. rarely spoke at hearings on her case, and refused to attend many of them. IPS representatives who appeared at the hearings described her behavior in prison as out of the ordinary, and other detainees who were in touch with HRM representatives, told us that she did not speak to anyone in prison. In February 2019, after over a year in detention during which her country of citizenship remained clouded in mystery and her deportation from Israel remained a remote possibility, HRM representatives worked to ensure that she was granted legal representation. In a hearing held for I. M. on March 13, 2019, a day after her case was discussed in the radio program “Seder Yom” on the station Kan Bet, the Adjudicator Dvir Peleg agreed to forward his decision and the details of the case to the Legal Aid Department at the Ministry of Justice, to ask them to consider appointing legal representation for I. M.. In November 2019, the Legal Aid Department hired Michal Pomerantz to represent I. M. After almost two years in detention, and without being identified by the Ministry of Interior, I. M. was released from detention after the District Court ruled that she suffers from a mental disorder.<sup>48</sup>

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<sup>47</sup> Detainee number 9065551. Full details are in HRM archives.

<sup>48</sup> Detainee number 9076135. Full details are in HRM archives.

Mental health disorders of detainees led to prolonged periods of incarceration in 2019, a failing of Israel's immigration system that the HRM described in two reports in recent years: *Forgotten in Prison*,<sup>49</sup> and *No Way Out: De-Facto Stateless Migrants in Israel*.<sup>50</sup> Below, the report will describe the cases of two of the detainees, a citizen of Guinea who has been held in detention a total of eight months, and was released in November 2019,<sup>51</sup> and a citizen of Liberia, who has been held for a total of over seven years.<sup>52</sup>

Similarly to I. M., I. S. was released in late 2019 after a cumulative detention period of seven years and ten months. I. S. was released after it became apparent that he suffers from a mental disorder. I.S., a migrant identified as a Guinean citizen, was arrested on November 2018 and released in November 2019 after the Immigration Authority failed to deport him. This was I. S.' third arrest, after being detained in the past for multiple years, as was detailed in the report *Forgotten in Prison* back in 2016. I. S. was detained between 2009 and until 2012, and was released on bail under the condition that he leave the country on his own. He was unable to do so, (regardless of his mental health status), due to inability to obtain travel documents from Guinea. On August 2012, he was jailed a second time six months after his release, and was held for four years and seven months, until late March 2017. During his second detention period, I. S.' mental disorder became more evident. His statement recorded in a hearing held on his case in February 2013: "As for the question of the Tribunal, I have not changed my mind. I do not want to return to my country. I don't have a homeland. I understand that to counter the decision of the State with regards to my country of origin, I need to turn to the authorized court, but there is no need for this. I am God, I am the Son of God. I am everywhere."<sup>53</sup>

Over the years, I. S. identified himself as the citizen of various countries: first as a citizen of the Ivory Coast, then as a citizen of Guinea, later as a citizen of Sierra Leon, and later again as a citizen of Guinea. During his last period in detention, he

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<sup>49</sup> The HRM, *Forgotten in Prison: The Prolonged Detention of Migrants*, December 2016.

<sup>50</sup> The HRM, *No Way Out: De-Facto Stateless Migrants in Israel*, 2020.

<sup>51</sup> Detainee number 1303094. He was held between November 23, 2009 until February 20, 2012; then between August 15, 2012 until March 27, 2017; and from November 4, 2018 until November 19, 2019. Totalling in over seven years and 10 months.

<sup>52</sup> Detainee number 1414159. He was detained between November 2011 until November 13, 2018, and from September 2015 until today (October 2020).

<sup>53</sup> From a hearing held for detainee no. 1303094 held by Adjudicator Liron Krispin Boker on February 3, 2013, held in Saharonim Prison.

refused the offers of the Tribunal adjudicator to exit to a third country, and tried to obtain Guinean travel documents through relatives. After these attempts failed, and the Ministry of Interior was unable to advance the process his deportation - he was release on bail totaling NIS 3,000 (almost \$900), and ordered to leave within four months. In conversation with I.S.' acquaintance, who agreed to be I.S.' guardian and ensure that he would abide by the conditions of his release, Adjudicator Krispin-Boker, who presided over his case during the last detention period, stressed the importance of providing psychiatric care to I.S.<sup>54</sup> He was released in November 2019 without any prescriptions or guidance regarding the psychiatric care he so required. Representatives of the HRM were able to help I. S. obtain prescriptions through the open clinic of Physicians for Human Rights. I.S. remains unable to leave Israel.

Another migrant held in detention throughout all of 2019, and the transcripts of whose hearings raise the concern that he, too, suffers from a mental health disorder, is B. Sh. As of the writing of this report, B. Sh. Has been held for over four years in administrative detention ahead of deportation. Cumulatively, he has been detained for over seven years. B. Sh. is a citizen of Liberia, who after crossing the border into Israel in 2004, filed an application for political asylum. In 2006, his request was rejected, and after group protection was removed from Liberians residing in Israel in 2007, he began a procedure to gain legal status through his Israeli partner. In 2011, that process was halted, and in November 2011, he was detained for the first time and faced deportation. In a hearing held on his case in August 2012, the Oz Unit that attempted to deport him reported that during the deportation attempt, B. Sh. laid on the ground while crying and screaming, thus foiling the attempt. In a hearing held on his case in June 2013, Adjudicator Marat Dorfman suggested the Legal Aid Department consider representing B. Sh. According to the adjudicator: "The detainee was observed in the courtyard of the prison wing, he walks hastily from one wall of another. He does not reach out to anyone and does not respond to questions. It appears that even if the detainee does not meet the definition of having a mental disorder, it should not be ignored that he is likely suffering from one or another psychological problem."<sup>55</sup>

After three years in detention, in November 2013, after representatives of the HRM

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<sup>54</sup> From a hearing held for detainee no. 1303094 held by Adjudicator Liron Krispin Boker on November 11, 2019, held in Saharonim Prison.

<sup>55</sup> From a hearing held for detainee no. 1414159, held by Adjudicator Marat Dorfman on June 3, 2013 in Saharonim Prison.

appealed on his behalf to the Tribunal, B. Sh. was released from detention.<sup>56</sup>

Two years later, in September 2015, B. Sh. was arrested again. During the hearings on his case, he persisted in his refusal to return to his country, but over the years, it appears that his condition deteriorated. He refused to attend some of the hearings. He would attend others, but refused to answer the questions of the adjudicators. After being detained in Saharonim Prison for a while, officials at the IPS shared their concerns about B. Sh.'s mental health with representatives of the HRM, whom B. Sh. Had refused to meet in recent years. In March 2020, as the COVID-19 pandemic spread worldwide and in Israel, HRM representatives turned to Adjudicator Liron Krispin-Boker, who has presided over B. Sh.'s case at the Tribunal, asking her to appeal to the Legal Aid Department to appoint legal representation for him. Two months after the HRM's appeal, we were informed that the case was being handled by the Attorney General's Office. B. Sh. is still being held in administrative detention, and the Legal Aid Department only appointed an attorney to represent him in September 2020,

On January 11, 2018, the HRM addressed the Minister of Justice at the time, Ayelet Shaked, asking her to provide guidance on legal representation for migrants who have been detained for prolonged periods, when it does not appear likely they will be deported. No response has been received to that appeal.

## Recommendations Concerning Preventing the Prolonged Detention of Migrants

- The release from detention of migrants who have been held for prolonged periods should not entail conditions they cannot meet, such as high bail, or locating guardians to monitor them at all times.
- Those released from prolonged detention should not be detained when they appear to check in at the offices of the Immigration Authority. If Immigration Authority clerks believe that the migrant should be placed in detention again, they should be summoned for a hearing in writing, a hearing during which the migrant should be allowed to have legal representation. The hearing should allow the migrant to show and prove the efforts they have made to leave Israel, before a decision is made to place them in detention again.

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<sup>56</sup> Hearing on the case of detainee no. 1414159, held on November 13, 2013.

- The State should appoint legal representatives to any person held in immigration detention for over six months, to ensure that they have representation in proceedings concerning their detention and its legality, and to facilitate the migrant's return to their country of origin whenever possible. Such legal representation is needed to protect the constitutional right to liberty and dignity, and under the obligation to reduce the infringement upon those rights, as well as protections the migrants enjoy under the right to a fair proceeding.
- The State and Ministry of Foreign Affairs should be proactive in reaching out to representatives of various countries for the purpose of identifying their citizens and issuing travel documents for them while they reside in Israel. Such efforts can be made by reaching out to foreign embassies in Israel and outside of it, making a formal appeal to international organizations in the countries of origin, and coordinating the arrival of a delegation from the country of origin to identify their detained nationals.



## *Forcible Deportation*

For the first time, in 2019, we were able to obtain from authorities concerning the "forcible removals" – the deportations of foreigners from the country against their will. This entails the use of Immigration Authority chaperons, and at times, the use of excessive physical force. Because of the importance of this information, and since it has never been published before, this chapter includes data on deportees in prior years, as well as an overview about forcible deportations, and the regulations of the Immigration Authority concerning them, which were violated at least once in 2019.

The response of the Immigration Authority provides the following data:<sup>57</sup>

In 2015, 16 people were forcibly deported: 12 men and four women.

In 2016, 12 people were forcibly deported: eight men and four women.

In 2017, 14 people were forcibly deported: 11 men and three women.

In 2018, 14 people were forcibly deported: ten men and four women.

These deportations were carried out to multiple countries, including: India, Georgia, Nigeria, the Ivory Coast, Moldova, Thailand, the Philippines, and Sri Lanka. According to the Immigration Authority, all those deported were removed to their countries of origin, and unlike years past, there were no cases of removal of migrants to countries that are not their homelands.

Data provided by the State indicates that until 2018, no minors were forcibly removed. However, the HRM knows that in 2019, 13-year-old Rohan Perez was forcibly deported with his mother, Rosemary.<sup>58</sup>

The relevant regulation that Immigration Authority inspectors are obligated to follow is the Regulation on Authorities of Inspectors (10.8.0002). According to the

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<sup>57</sup> Additional responses by the Authority, dated November 12 and November 14, 2019, in response to HRM requests under the freedom of information act.

<sup>58</sup> Amir Alon, "The Teenager was Deported to the Philippines: 'I Begged them to Stay, but They Threw Us into the Plane'," Ynet, August 13, 2019. (Hebrew)









Immigration Authority, the only tool used for forcible deportations are handcuffs, in line with the Regulation on Use of Handcuffs (10.8.0004). Over the years, however, the HRM collected many testimonies showing that inspectors have used restraining belts, head coverings to blind the detainees, and even forcibly given sleeping pills to those being deported.

Migrants removed from Israel with chaperons were accompanied by Immigration Authority inspectors from the moment they arrived at the airport. At least two inspectors accompany each deportation, but the number of inspectors can be increased in accordance with the decision of the director of the Removal Branch at the Immigration Authority. The inspectors wear civilian clothes.

In most cases, only one deportee is placed on a flight, but according to the Immigration Authority "on rare occasions" there would be two accompanied deportees on a single flight. There is no official limitation on the number of migrants the Ministry of Interior is authorized to remove when accompanied.

According to the Immigration Authority, each migrant slated for deportation is given at least two notices that there are plans to remove them with a chaperone (or/and forcibly) before the removal, and during the first removal attempt, no force is used. According to the Authority, the use of force will only be made after at least two removal attempts, and at times after an even larger number of attempts. However, there is no particular minimal-length period during which individuals cannot be removed against their will. In any case, the removal is carried out in accordance with the decision of the Tribunal. However, in the case of the child Rohan Perez and his mother Rosemary, two removal attempts were made, one that failed and another that succeeded, both of them using force, and without any prior notice. The Immigration Authority also ignored the fact that a hearing on their case was scheduled to be held at the Tel Aviv District Court a day after their deportation.<sup>59</sup>

According to the Immigration Authority, an action report is compiled in any case when Authority inspectors use force during removal proceedings. The Authority notifies the Ministry of Foreign Affairs, the Interpol, and the consulate or embassy of the country of destination during a forcible deportation and/or accompanied deportation. The accompanied deportation is carried out only after receiving prior approval by the airline. Between 2015–2018, two removal attempts failed, both of them in 2018, in Air France flights. The crew foiled the attempts, due to their refusal

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<sup>59</sup> Administrative appeal (Tel Aviv) 23127-08-19.

to cooperate with the deportation, after witnessing the physical resistance of the detainees to their deportation.

The body in charge of the flights is the Removal Branch in the Enforcement and Foreigners Directorate, and it is bound by the limitations imposed by the Inbal Company, the governmental travel agency. The Immigration Authority did not provide information about forcible deportations in 2019, but in addition to Rohan Perez and his mother, which the Authority was successful in forcibly deporting, in 2019, the HRM represented two migrants who were subjected to failed forcible deportation attempts, one man and one woman who are citizens of Nigeria.

Despite our request for this information, the Authority refused to answer our questions whether Immigration Authority inspectors who accompany the detainees identify themselves as such before the crew and passengers, and whether the Immigration Authority or any other Israeli governmental body is responsible for ensuring that the person being removed will be allowed to enter the country to which they are being deported, and to ensure that they will not be jailed there for illegal residency.

### **Recommendations on Safeguarding the Rights of Migrants During Forcible Removal**

- Coercive measures and threats must not be used to compel asylum seekers to leave Israel.
- The Forcible Removal Regulation must be altered in a manner that ensures that violence will not be used against migrants during efforts to remove them from Israel. Migrants must also be allowed to exhaust legal appeals to prevent their deportation, before attempts are made to forcibly deport them.

# *The Detention Review Tribunal*

## *for Undocumented Residents*

As mentioned, in 2019, 5,341 transcripts and decisions were uploaded to the database of Tribunal decisions. These documents pertain to the cases of 3,238 detained female and male migrants, who were held in Saharonim and Givon prisons prior to their deportation from Israel. **This means that according to the information in the database, most migrants appeared before the Tribunal fewer than two times, on average, prior to being deported or released from detention.** In addition, according to the data, over a fifth of the migrants who appeared before the Tribunal in 2019 were citizens of Ukraine. The countries next in line after Ukraine, whose nationals made up the majority of detainees in recent years were Georgia, Russia and Thailand, in that order. The adjudicator who deliberated on the largest number of cases is Raja Marzouq, who presided over hearings mostly in Givon Prison. In 2019, he issued 2,608 hearing transcripts and decisions. Second in line is the Adjudicator Liron Krispin-Boker, who in 2019 presided over hearings mostly in Saharonim Prison, produced 1,652 transcripts and decisions.

**In late 2019, positive changes were made to the Ministry of Justice website and the hearing transcripts began to be uploaded shortly after the hearings, in a way that allowed those visiting the website to locate the decisions concerning their loved ones, verify that they were detained, or identify possible human trafficking victims.**

Examining the decisions to release detainees by adjudicators Marzouq and Krispin-Boker indicates that in 2019, over 40 percent of the detainees who were released had legal representation (by private attorneys or the HRM).

### **Migrants' Routes of Entry into Israel**

**Additional interesting information gleaned from the hearing transcripts shows that migrants arrive in Israel not solely through Ben Gurion Airport or the border with Egypt.** Some migrants, particularly from eastern Europe, entered Israel through the Taba border crossing with Egypt, through the Allenby Bridge to Jordan, and through the airports in Ramon and Ovda, or even through the Ben Gurion Airport - without passing through border control.

During 2019, the following detainees were brought before the Tribunal:

- At least 59 individuals who entered Israel through the Taba crossing.
- At least 24 individuals who entered Israel through the Ovda Airport.
- 17 individuals told the Tribunal that they entered Israel through the Ben Gurion Airport, but without passing through passport control. All of them were nationals of Georgia.
- At least 11 individuals who entered Israel through the Allenby Bridge crossing.
- At least two individuals who entered Israel through the Ramon Airport.
- One woman who entered Israel through the Haifa Port and a man who entered Israel through the Ashdod Port.

In 2019, the Police carried out an investigation concerning a network of smugglers that brought in Georgian citizens through the Ben Gurion Airport in violation of Israeli law.<sup>60</sup> It appears that due to the investigation, and as part of it, the adjudicators asked many questions of the migrants who testified that they had entered Israel through this route. For example, on July 23, 2019, a citizen of Georgia testified before the Tribunal:

"I am from Georgia. I do not have legal representation. I was arrested by the Immigration on Sunday at 5pm, and the Immigration questioned me until midnight yesterday. I know Russian and the Immigration questioned me in Russian. I didn't feel well, so they took me to the hospital, put in an I.V. I was dehydrated and I was given pills. I feel better now and wish to quickly return to Georgia. **I entered in an illegal manner through the Ben Gurion Airport. I entered about six months ago. I paid money. I personally did not know the man, but I was helped [guided] on how to leave through a phone with an unidentified number. I paid 7,000 dollars in Georgia. I was not helped to exit here at the airport. I was given a card that allowed me to open a door (at the airport). I was given it back in Georgia and told to toss it after leaving.** My passport is with the Immigration and I know that I do not have a visa to stay in Israel. I know that this is not allowed. I entered to work. I ask to give me anti-anxiety medication. I have nothing to add. [sic]"<sup>61</sup>

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<sup>60</sup> "The Failure at the Ben Gurion Airport: Hundreds of Georgians were Smuggled to Israel in Recent Years," Kan 11, June 17, 2019. (Hebrew video)

<sup>61</sup> Detainee number 9109475.

### Inattentiveness to Suspected Cases of Human Trafficking

The Tribunal serves as a central juncture for identifying human trafficking victims. Detainees should be asked questions that will allow identifying such victims in a manner that will advance the effort to eliminate human trafficking in Israel. However, the transcripts of hearings indicate that the adjudicators do not display sufficient attentiveness to testimonies that hint at the possibility that the migrants before them were victims of trafficking. Except the case of Georgians who entered Israel through the Ben Gurion Airport without passing through passport control, no transcripts were located that showed the adjudicators attempted to understand whether the detainees appearing before them fell victim to human trafficking or some other criminal scheme. For example, at least eight detainees described in the hearing, without being prompted, that they purchased a forged work permit while residing in Israel. The adjudicators did not try to find out from whom they purchased the visas or whether the migrants found out only later that they were victims of fraud.<sup>62</sup>

Responses provided to Freedom of Information requests may also attest to the lack of sufficient vigilance of the part of Tribunal adjudicators concerning human trafficking. We have not yet received the data for 2019, but in 2018, not a single detainee held in Saharonim or Yahalom had their case referred to the police due to suspicion that they fell victim to human trafficking. No detainee was recognized as a human trafficking victim either. In Givon Prison, during 2018, suspicions arose that one detainee fell victim to human trafficking, and indeed, she was released from detention after meeting the legal criteria for this designation by the Israeli Police.<sup>63</sup>

### Inconsistency in the Conduct of Tribunal Adjudicators

Another prominent phenomenon that becomes apparent upon review of Tribunal decisions is the inconsistency of the adjudicators' decisions concerning release of detainees. **For example, Adjudicator Liron Krispin-Boker demanded that all detainees held under the "Criminal Procedure" secure a "guarantor" to be released from detention.**<sup>64</sup> Adjudicator Krispin-Boker essentially demanded that this guarantor serve as a guardian who would accompany the released migrant

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<sup>62</sup> The details of the detainees are safeguarded by the HRM.

<sup>63</sup> A response from the Immigration Authority dated June 5, 2019, in response to a request made by the HRM based on the Freedom of Information Act.

<sup>64</sup> The Regulation on Handling Infiltrators involved in Criminal Proceedings, 10.1.0017, issued on July 1, 2013.

24 hours per day, put him up in his home, come with him to work, and constantly monitor him – similar to the function of guardians that exists in release of detainees involved in criminal proceedings. **On the other hand, Adjudicator Raja Marzouq did not make such a demand in any of his decisions to release migrants during 2019.**

The difficulty of finding a friend or relative who is willing to host the released migrant in his home, to ensure that the person arrives to his workplace, and provide a guarantee for his 24/7 monitoring, may explain why an examination conducted by the HRM showed that on average, detainees held under the Criminal Procedure and whose case was adjudicated by Krispin-Boker were released from detention after 84 days. This period is almost twice as long as the average period until release in cases whose adjudicator was Raja Marzouq (an average of 37 days). In addition, it appears that Adjudicator Krispin-Boker set almost identical criteria in her release decisions (bail totaling in NIS 3,000 in most cases, at times allowing the detainee to pay the bail in installments, and requiring a guarantor to serve as a guardian). On the other hand, Adjudicator Marzouq set different sums of bail to various detainees, ranging from NIS 1,000 to NIS 15,000, likely based on his assessment concerning the ability of the detainees to deposit the bail.

### **Encouraging Detainees to Depart to a Third Country**

Since March 2013, Immigration Authority personnel have been applying pressure on Sudanese and Eritrean asylum seekers to depart Israel to their country of origin, or alternatively, to two third countries, Rwanda and Uganda. Israel led asylum seekers to believe that they will be able to obtain legal status in those countries, when this is not the case.<sup>65</sup> The efforts of Israeli authorities to compel asylum seekers to leave to those third countries through open-ended detention failed back in April 2018, after Israeli authorities were forced to admit before the HCJ that the third countries refused to accept asylum seekers deported by force.<sup>66</sup> In 2019, Eritrean and Sudanese asylum seekers who wished to do so could leave to Uganda in search of safer refuge. However, Israeli authorities were and continue to be barred from forcing them to leave, and are not allowed to place them in detention to “convince” them to leave.

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<sup>65</sup> The HRM and ASSAF, “Where There is No Free Will,” April 2015. <https://hotline.org.il/en/publication/where-there-is-no-free-will/>

<sup>66</sup> HCJ 2245/18 the HRM and others vs. The Prime Minister. For more see: HRM, “Immigration Detention in Israel Annual Monitoring Report – 2018”, April 2019. <https://hotline.org.il/en/immigrationdetentionmonitoring2018/>

Reviewing the decisions issued by Tribunal Adjudicator Liron Krispin-Boker presents a distributing finding: **it appears that many of the discussions the adjudicator conducted in 2019 hearings with Eritrean and Sudanese asylum seekers detained in Saharonim focused on the question of whether they are willing to leave to their country of origin or to a third country.** As stated previously, citizens of those countries reside in Israel under a non-removal policy and the State does not forcibly deport individuals to Sudan and Eritrea. The transcripts further show that the adjudicator interrogated those who responded to her saying that they do not wish to leave Israel, asking them for the reasons for their refusal. For example, a detainee from Eritrea responded thus to the adjudicator: "as for the question of the Tribunal, I will not agree to leave to my homeland or to a third country, because there is a mess in my country, and a third country is just like my country. [sic]"<sup>67</sup>

**A review of the transcripts indicates that during 2019, Adjudicator Krispin-Boker raised the option of leaving to a third country with at least 68 detainees, of them 36 Eritreans, 23 Sudanese nationals, and nine citizens of other countries. It should be noted that to the best of our knowledge, the third country agreements only pertain to citizens of Eritrea and Sudan, and therefore, the offer to the nine other nationals appears odd. In at least 12 of the hearings, the entirety of the detainee's statement documented in the transcript was about the possibility of leaving to a third country or to the country of origin. With at least 21 detainees, Adjudicator Krispin-Boker raised this question in more than one hearing. It is important to note that the question of deportation or exit to a third country is not within the purview of the Tribunal, and a refusal to depart to a third country cannot, legally, be the grounds for continuing to detain a person. Adjudicator Krispin-Boker's practice of repeatedly asking detainees whether they are willing to depart to a third country raises the concern that detainees' refusal to depart has become grounds for her illegal decision to extend the order of their detention, keeping them incarcerated.** For example, the adjudicator wrote in a decision she made on the matter of an asylum seeker from Eritrea: "In the hearing held before me, the detainee insisted he will refuse to depart from Israel to a third country, but did not provide any satisfying reason for this refusal."<sup>68</sup> It should be noted that in the transcript of this hearing, the detainee is mentioned as saying that he refuses to leave to a third country because he has a son in Israel.

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<sup>67</sup> Hearing on the case of detainee number 1504560, July 3, 2019.

<sup>68</sup> Hearing in the case of detainee number 9040174, December 9, 2019.

## Deficiencies in Translation of Hearings Conducted to Migrants Suspected of Illegal Residency

An issue that appears to have preoccupied the adjudicators and arose in many transcripts is the hearing held for migrants upon their arrest, and particularly the issue of translation during that hearing. A migrant from Egypt described in a hearing held on March 19, 2019:

"On Sunday, the police arrested me and moved me to immigration [custody]. At 2am the immigration questioned me. At immigration **there was someone who translated to Arabic over the phone. In the room, there was no one to translate. The person who was in the room spoke Hebrew, they translated over the phone and also spoke to each other. I understood a lot and would answer their questions. They did not ask me why anyone would wish to kill me (in my country of origin). [sic]**"<sup>69</sup>

A migrant from Russia testified during a hearing held on February 11, 2019: "Immigration arrested me on Thursday **and after that they questioned me. In the room, there was no translator to Russian, and the translation was done over the phone.**"<sup>70</sup>

In 2019, at least 14 detainees informed the Tribunal about problems in translation during the initial hearing upon their arrest: translation over the phone, or translation to a language that is not their native tongue (for example, translation to Russian provided for a migrant from Georgia).

### Recommendations for Improving the Judicial Oversight of the Detention Review Tribunal

- The hearings at the Tribunal should be structured in a manner that will maximize the likelihood of identifying suspected victims of human trafficking and other crimes.
- Stenographers should be hired to document the discussion held at the hearing, to fully reflect what happens in the hearing.
- Recurring training should be provided to the adjudicators on identifying victims of human trafficking and modern-day slavery, and to familiarize them with the tools at their disposal to facilitate the handling of these cases.
- The handling of possible human trafficking cases should be codified in a regulation, to ensure quick referral to the relevant bodies in the Israeli Police, the Ministry of Justice, and the Ministry of Welfare.

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<sup>69</sup> Detainee number 9102917.

<sup>70</sup> Detainee number 9100779.



- The principle of open justice must be respected, and those who wish to attend the hearings held before the Tribunal must be allowed to do so.
- Authorities should hang signs in various languages throughout the detention facilities, which clarify to detainees their rights, and the jurisdiction held by border control officers and Tribunal adjudicators before whom they appear.













שם הילד: נדב  
קראים ל: איציק  
וזם אי תלמידה שולך

הדלת מתחילה להיפתח, פגנתי כח האדם  
מחכים להחשוד

400

קודם כל נחמדים זה הילד.

הילד נדב  
קראים ל: איציק  
וזם אי תלמידה שולך

הדלת מתחילה להיפתח, פגנתי כח האדם  
מחכים להחשוד

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## *Women and Children in Detention Facilities*<sup>71</sup>

According to Immigration Authority data, at the end of 2019 a record number of caregivers were brought to and resided in Israel: 57,111 women and men who work in Israel with a legal work permit. At the end of the year, 17,484 undocumented migrants resided in Israel, 12,145 (70 percent) of them who arrived in Israel to work in the care-giving sector wherein most employees (about 84%) are women.<sup>72</sup> The overwhelming majority of caregivers complete their period of legal employment in Israel and return to their homeland. Those among them who enter a romantic relationship or become pregnant are forced to end their legal employment, struggle to make a living, and as a result, find it difficult to return to their homeland with empty hands. This induces many of them to decide to remain in Israel illegally due to the huge pay gaps between Israel and their countries of origin.

The State of Israel continues to restrict the rights of migrant workers to family life in Israel. Migrants are prohibited from having relationships with each other or to maintain a family in Israel. If they do so, they face having their work permit voided and being detained and deported from Israel.<sup>73</sup> A migrant who gave birth in Israel and wishes to remain and work without having her permit voided is forced by authorities to disclose the identity of the father to ensure his deportation, or prove that he exited the country of his own volition.

**Photo by Malin Fezehay**

**Photo by Yair Meyuhas**

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<sup>71</sup> Extensive background information of the detention of migrant women and their children was provided in the Annual Monitoring Report for 2018 by the HRM.

<sup>72</sup> See fn. 5.

<sup>73</sup> Population, Immigration and Borders Authority, Regulation on Handling a Pregnant Foreign Worker Who Gave Birth in Israel, regulation number 5.3.0023, issued on May 20, 2013. (Hebrew).

In addition, she must find some kind of an arrangement for the child to allow her to continue her work 24 hours per day, six days per week, in cases when the employer does not wish to allow the child to reside in his home, thus splitting the caregivers' attention and time between the baby and client. A child who is born to undocumented migrants in Israel is also an undocumented migrant.<sup>74</sup> Other women arrived in Israel as tourists and remained in violation of the law. They too at times engage in relationships in Israel, and even raise children born in Israel.

Female asylum seekers who reside in Israel under a non-removal policy (citizens of Eritrea and Sudan) are not jailed since 2013. The same policy applies to women from Congo, who have resided in Israel under the non-removal policy since 2003. However, the Entry to Israel Law allows for the detention of undocumented migrants, whether they arrived as legal migrant workers or as tourists, and for their deportation from Israel. The law also allows for their and their children's arrest and deportation from Israel. Since March 2011, the Immigration Authority inspectors have arrested and deported undocumented migrants with their children. However, over all these years, the inspectors arrested families with babies and kindergarten-age children only.

The HRM's monitoring of family detention in recent years indicates that over the past three years, a significant improvement has taken place when it comes to how the Immigration Authority treats the families: inspectors no longer barge into homes in the middle of the night, they no longer break doors or violently wake up the families. Instead, the inspectors of the Immigration Authority arrive in the early morning hours with search warrants, they knock on the doors and wait for the tenants to open them. In cases when the tenants do not open the door, the inspectors break it and even break windows to gain entry into the apartment.

Starting in 2018, most parents who have been detained by Immigration Authority inspectors were released after providing proof that their children are enrolled in Israeli schools. According to testimonies of migrants, they were issued deportation orders and told by Immigration Authority inspectors that they must leave the country at the start of the summer break, and that if they did not, they would be arrested and deported. Every year, with the start of the summer break in July-August, the HRM records a rise in the number of families detained and deported from Israel.<sup>75</sup> In 2019, Israel altered the policies regarding detention and deportation of migrant

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<sup>74</sup> Ibid.

<sup>75</sup> See on the website of the HRM: [Children of migrant workers](#).

children, following an intensive arrest campaign of school-aged migrant children (and not merely families with babies and kindergarten-age children).

It is important to note that multiple studies show that even brief periods in detention are incredibly harmful to children's mental and physical well-being. The impact of incarceration may last a lifetime: the mental effect on children of being forced to observe their parents in a state of distress and helplessness is destructive. The detention itself undermines their sense of security, which is necessary for proper development. This impact is aggravated further because the children are uprooted from the world they grew up in, from Israeli society, in which they were raised from birth.<sup>76</sup>

While policies regarding immigration are a highly contentious issue, even countries that have hardened their immigration policies are in agreement that the rights of children should be protected, regardless of their legal status. There are alternatives to jailing children and families: assigning a case worker that will facilitate the family's departure, allowing the family to continue residing in the community until the deportation while being accompanied by the case worker, residing in special facilities for families while being assigned a case worker, as well as placing unaccompanied children in boarding schools rather than immigration detention. In a ranking of the International Detention Coalition, which seeks to prevent the jailing of migrant children, Israel was ranked in the 15th worst place out of 20.<sup>77</sup>

The previous State Comptroller, Yosef Shapira, stated that "the Immigration Authority ought to conduct a genuine and extensive examination of the possibility of implementing any of the alternatives offered to it, and creating a 'series of alternatives' that will be examined in line with the circumstances of each case. Only in cases when none of the alternatives is appropriate, will the detention facilities be used. This is intended to ensure that detention of minors will be carried out, to the extent possible, in line with the spirit of the Convention on the Rights of the Child."<sup>78</sup>

Detention of children should be the last resort, and even then, with a strict limitation of the number of days of detention. The detention should be carried out in conditions

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<sup>76</sup> The HRM, the Association for Civil Rights in Israel, Physicians for Human Rights-Israel, "Alternatives to Detention of Migrant Children," January 2014. (Hebrew)

<sup>77</sup> Lee Yaron, "Israel Ranked 5th From Worst of 20 Countries on Detention of Migrants' Children," Haaretz, August 14, 2018.

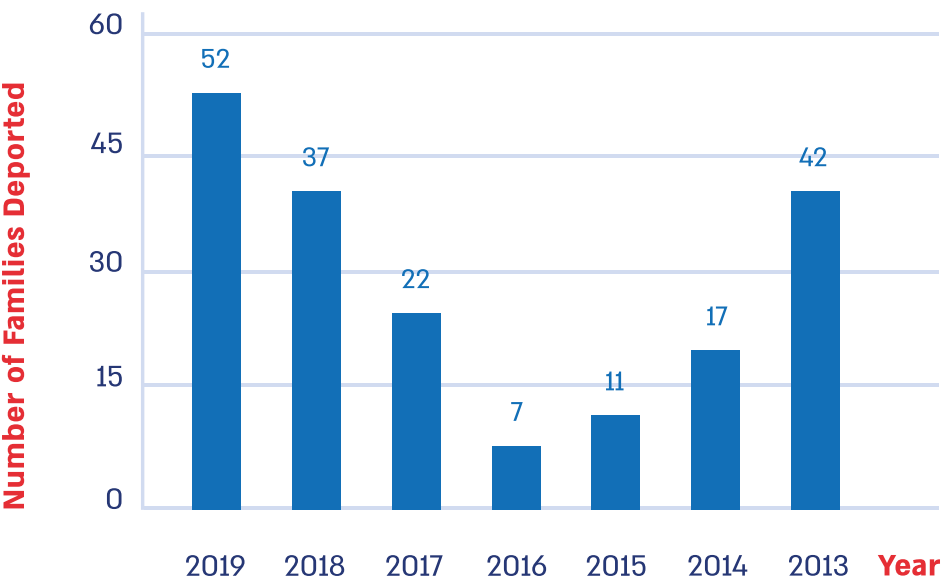
<sup>78</sup> The State Comptroller annual report 63(c) for 2012 and the fiscal year 2011, "Handling of Undocumented Minors in Israel," May 2013.



suitable for children. Prior to resorting to detention of children, authorities should rely on alternatives to detention mentioned above.

Although article 13(H)(E) of the Entry to Israel Law determines that the Minister of Internal Security may promulgate edicts concerning the conditions of detention of families and children, no such regulations were promulgated, and the Entry to Israel Law itself does not address detention of children.

**Data on detention of families of migrants<sup>79</sup>**



Data provided by the State in September 2019 shows that over the past seven years, 188 families of migrants and their children were placed in immigration detention in Israel. These data indicate a sharp rise in the number of families detained in 2019

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<sup>79</sup> Date was provided by the State in its response dated September 15, 2019, as part of Administrative Petition 27147-09-19 Jodaline Dela Vega vs. The Population, Immigration and Borders Authority.

compared to years prior, although data for 2019 were only partial. By the end of 2019, additional families were arrested, including seven migrant families with children in Israeli schools. This means that the number of families detained in 2019 stands at 59 families, at least.<sup>80</sup>

Between July 21 and until the end of 2019, at least 17 families were arrested, with a total of 20 school-aged children. Among the 17 families of students, one family was deported against its will, and two mothers, arrested with their children, chose to depart the country upon their arrest, despite pending legal proceedings. One family left to Turkey with an 11-year-old boy on the day of arrest, and another family left to Nigeria, also with an 11-year-old, after a month in detention. All the other families hired a lawyer or found pro-bono attorneys through the NGO founded by migrant mothers, United Children of Israel (UCI), and are engaged in legal proceedings attempting to regularize their status in Israel.

In addition to the 17 families that had been arrested, we were informed of five additional cases of inspectors breaking into apartments of families with school-aged children, aiming to arrest the family. Since the students were not at home at the time, the arrest was averted.

The 17 families of students that were arrested during 2019 and identified by the HRM included: a family of Turkish citizens who entered on tourist visas, two families of Nigerian nationals who entered on a tourist visa, the family of a caregiver from Nepal, two families of caregivers from India, and 11 families of caregivers from the Philippines. Three mixed families (a father from Thailand and a father from the Philippines, a father from India and a mother from Nepal, and a father from Turkey and a mother from the Philippines) were also included in this group.<sup>81</sup>

In a number of legal proceedings conducted in late 2019, an attorney on behalf of the families argued that the Immigration Authority altered its policies and began carrying out deportations of school-aged children, who were previously immediately released along with their parents even when they were detained for illegal residency in Israel.<sup>82</sup>

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<sup>80</sup> This number only includes families who turned to human rights organizations for help. Thus, the number of families detained with their children is larger.

<sup>81</sup> The data were collected by the NGO UCI (United Children of Israel).

<sup>82</sup> Appeal to the HCJ on this change in policy was filed by the attorney's office Tadmor and Levy: HCJ 5544/19 Jeronimo and others vs. The Minister of Interior and others. Filed on August 22, 2019, and rejected on September 5, 2019, on the grounds that the attorneys failed to exhaust other procedures prior to filing the petition.

The attorney made this argument since until July 2019, Immigration Authority inspectors did not barge into homes of school children, and when they encountered school children in the course of their work, they avoided detaining them or their mothers.

Since 2019, our monitoring shows that Immigration Authority inspectors began, for the first time, to break into homes of families with school-aged children, carrying search warrants. They would arrest the families with the aim of deporting them.<sup>83</sup> Our monitoring also shows a significant increase in the efforts made by the Immigration Authority to execute these arrests and removal from the country. These efforts entail the following actions, which were not previously practiced:

- Repeatedly breaking into the same apartment with the aim of locating undocumented school-aged children.
- Providing false information to detained families claiming that their efforts to obtain a reprieve from deportation from the courts have failed.
- Sending a social worker to the cell holding the family to convince the detainees to depart to their homeland.
- Using the opinion of this social worker that implies that the benefit of the minors is to return to the homeland of their parents.
- Closely following the legal proceedings and arranging flights to the families only hours after their petitions were rejected, before the attorneys of the detainees had the opportunity to appeal the decision.
- Violating the regulations of the Immigration Authority by deporting the families with accompanying inspectors and without two prior warnings, as specified in the relevant regulation.
- Assigning inspectors to accompany the families until they reach their country of destination.

On October 10, 2019, following a letter on the matter of detention of migrant children authored by Attorney Yehudit Karp, the former Deputy Attorney General, to the Minister of Justice, the State published the response by Dr. Omri Ben Zvi from the Ministry of Justice's Advisory and Legislative Department. The response reported that following a discussion on the matter, a decision was made to change the Immigration Authority regulations, so that prior to issuing deportation and detention

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<sup>83</sup> Ibid.

orders to families with children over the age of 12, a hearing will be held for the child, to examine what would best serve the child's interests. The good of the child will be taken into account when making the decision.<sup>84</sup>

By the end of 2019, the Immigration Authority regulations on the matter were not amended, but a series of petitions filed by detained migrant families that were arrested with their school-aged children resulted in only one forcible deportation: of 13-year-old Rohan Perez and his mother, who were deported against their will using physical force. The other families that were detained are involved in litigation, which resulted in either voiding the deportation order or a temporary injunction that is preventing their detention and deportation as long as the legal proceedings on their matter are ongoing.

By the end of 2019, at least 20 school-aged children (belonging to 17 families) were detained, of them eight over the age of 12, as well as five mothers to 13 additional school-aged children who were not held in detention. The children were detained between one day to 31 days. Some of the families were held in Givon Prison and others in Yahalom. Some of the families were moved between Givon and Yahalom prisons. Some families considered the conditions in Givon Prison to be harsher, while others thought the conditions at the Yahalom Facility were worse. Most of the families preferred the "airplane food" served in Yahalom over the prison food in Givon. The children particularly struggled to adjust to the crowded conditions in Yahalom, where exiting the cells is limited for very short periods and is not possible everyday. On the other hand, in Givon Prison, the children are free to leave the cells during most hours of the day, and must enter the cells during the prisoner counts and at night.

## Recommendations on Child Detention

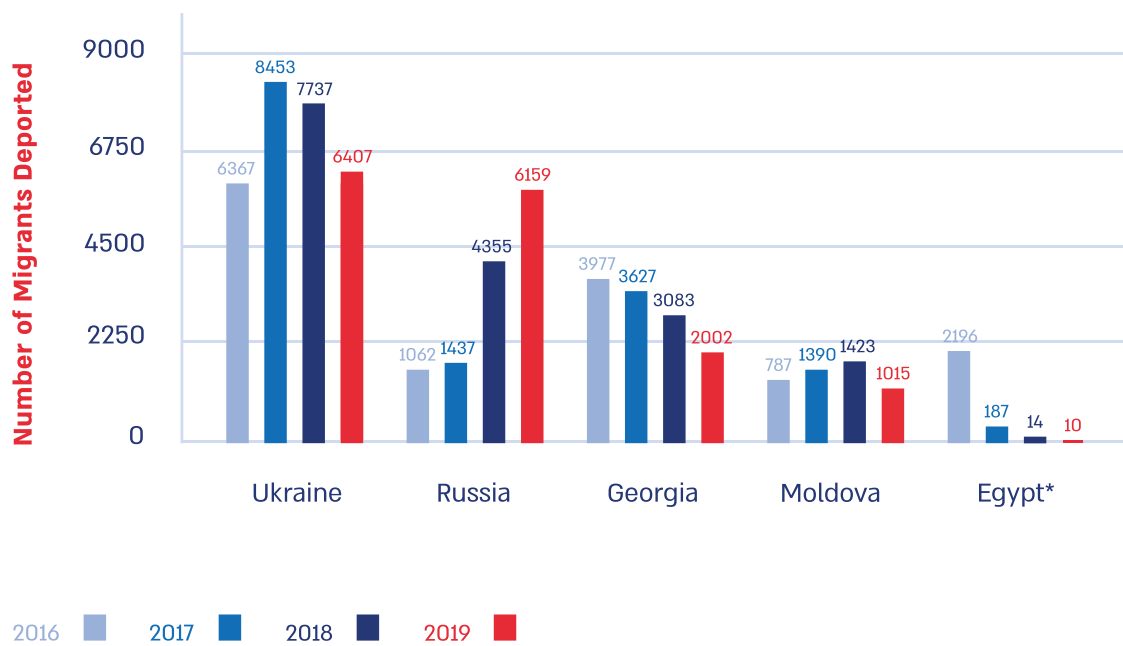
- In cases when State wishes to deport families with children, a case worker should be appointed to facilitate the departure of the family, while avoiding incarceration. Children should not be held in detention facilities, and more proportional alternatives to detention should be advanced and adopted.

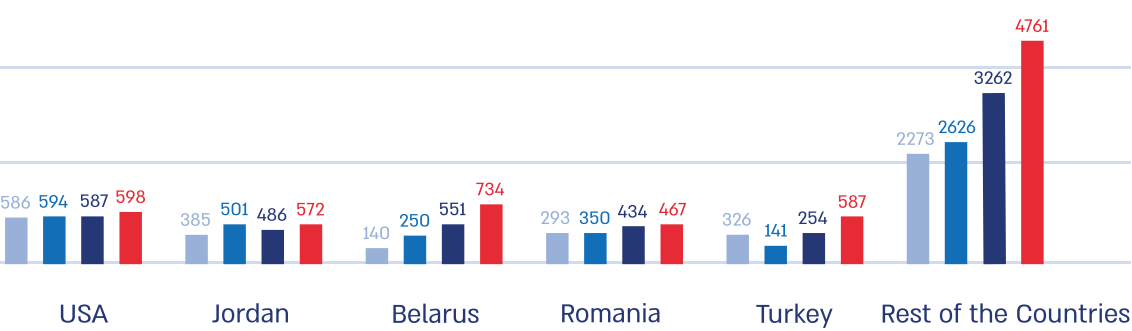
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<sup>84</sup> Response of Dr. Omri Ben Zvi to Adv. Yehudit Karp, dated October 10, 2019. (Hebrew)

## Individuals Denied Entry to Israel

Denial of Entry to Israel According to Countries of Origin





In 2019, Israel denied the entry of 23,312 individuals who attempted to enter Israel through Ben Gurion Airport, a three percent rise in the number of entry rejections compared to 2018. The number of individuals denied entry from countries with which Israel maintains agreements to waive pre-arrival visas has steadily grown in recent years.

### **Denial of Access to the Asylum System to Individuals Denied Entry to Israel**

In 2018, the HRM represented 13 asylum seekers from Sri Lanka, among them two women, who escaped their homeland immediately after Mahinda Rajapaksa rose to power again in a controversial period. Supporters of Rajapaksa threatened the 13 asylum seekers, who decided to flee for their lives. The 2018 monitoring report detailed the Immigration Authority's attempts to summarily deport them from the country, and the efforts made by the HRM to prevent their deportation before their asylum applications were examined.<sup>85</sup> It should be noted that the deportation of individuals who state that their lives of liberty are under threat in their country of origin violates refugee law and the non-refoulement principle, which is part of customary international law, which Israel (and all nations) are obligated to uphold.<sup>86</sup>

In 2019, the HRM was informed about a matter of six Nigerian asylum seekers, five men and a woman, who upon arrival in Israel, claimed that they fled their country and face threats to their life if deported back to it. The six asked to apply for political asylum in Israel. Representatives of the HRM managed to reach only two of the six and represent them in legal proceedings. Three of them were forcibly deported, through the use of brute force, a day after arriving in Israel, and another asylum seeker was apparently deported a little later, since we were unable to locate him in prison.

One of the asylum seekers from Nigeria described for an affidavit to Attorney Alaa Khater of the HRM:

"At some point, the representative of the Immigration Authority told us that there will be a second flight on the early morning hours of February 24, 2019. All of us, for our own reasons, told the officials we cannot return. I tried to explain them why I personally cannot return there, and that my life is in real danger. The officials did

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<sup>85</sup> The HRM, Detention of Migrants and Asylum Seekers in Israel - Annual Monitoring Report for 2018, April 2019

<sup>86</sup> For a detailed explanation, see on the website of the Hotline for Refugees and Migrants.

not want to listen to what I have to say, and kept telling me that I must board the flight. When they removed me from the bus, I kept resisting and told them I cannot return. One of the Immigration officials gave me a strong kick to the testicles. I kept resisting, and eventually they returned me to the bus... Of the six who resisted, only three managed to remain in Israel. G., myself and the guy who was not from our group. All the rest were put on the flight and returned to Nigeria.”<sup>87</sup>

G., who arrived on the same flight from Nigeria, whom Alaa Khater met separately, described for an affidavit: “The representatives of the Immigration told me that I have to return to Nigeria and that I am being taken to the plane. I told them again and again that my life is in danger there and that I cannot return. No one wanted to hear me. They said that they don’t care, and that I must get on the plane.”<sup>88</sup>

As in the case of the asylum seekers from Sri Lanka, which occurred a year prior, the HRM became aware of the plight of P. and G. only owing to the determination and ingenuity of the asylum seekers, and some luck: G. managed to convince the Immigration Authority official at the Yahalom Facility to allow her to call her sister in Nigeria, and the sister managed to reach the UNHCR in Israel, who turned to the HRM. The HRM then managed to locate her before the Immigration Authority was able to deport her. This, however, only happened after three other asylum seekers in the group were deported, using excessive violence, back to their country of origin.

It is unknown how many of the 23,312 foreigners who arrived at Ben Gurion Airport during 2019 and whose entry was denied attempted to seek asylum, and how many of them would have been entitled to protection if their requests had been examined. In a response to a Freedom of Information request, the Immigration Authority stated that although the possibility to apply for asylum exists, none of those denied entry filed asylum claims.<sup>89</sup> In a later response, the Immigration Authority admitted that 15 individuals among those denied entry had filed for asylum, but those are exactly the asylum seekers represented by the HRM (two Nigerian nationals and 13 Sri Lankan citizens), and if not for the efforts of the HRM, they would have been summarily deported.<sup>90</sup>

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<sup>87</sup> From an affidavit of P. dated February 27, 2019 provided to Adv. Alaa’ Khater of the HRM.

<sup>88</sup> From G.’s affidavit, dated February 27, 2019, made before Adv. Alaa’ Khater of the HRM.

<sup>89</sup> Response of the Immigration Authority on May 19, 2019, to a request filed by the HRM under the Freedom of Information Act.

<sup>90</sup> Response of the Immigration Authority dated June 4, 2019, to a request filed by the HRM under the Freedom of Information Act.



### The Violation of the Right to Legal Representation of Attorney-Client Privilege

The Yahalom Facility holds both individuals denied entry as well as migrants arrested inside Israel and slated for deportation, usually families with children. As mentioned, in 2019, Israel denied the entry of 23,312 individuals, about half of whom were held at the Yahalom Facility.<sup>91</sup>

Testimonies of detainees indicate that only the assertive among them manage to realize their right to a phone call, to notify the outside world that they had been arrested. But even in cases when the detainees held in Yahalom who wish to apply for asylum manage to inform others of their arrest, their attorneys struggle to represent them in the short time-frame before Israeli authorities manage to deport them from Israel. The Yahalom Facility operates according to a regulation that stipulates that attorneys can visit the facility between 9am to 3pm, Sunday through Thursday, for a period of up to 30 minutes. All visits must be carried out following prior coordination. To extend the duration of the visit, attorneys must obtain permission from the shift manager of the facility. In urgent cases, attorney visits can be carried out beyond the visitation hours, but this too requires the permission from the director of the facility.<sup>92</sup>

The requirement that attorneys coordinate visits to Yahalom prior to arrival, and the limited visitation hours, are out of sync with the needs arising from the facility's operation: individuals are jailed in the facility after arriving at the Ben Gurion Airport at all hours of the day, including in the middle of the night. If they are denied entry to Israel, they may be immediately deported without legal representation. These conditions ensure that a large share of the cases of detainees in the facility become urgent, yet the regulation governing the management of the facility does not properly reflect this, and in reality, attorneys' access to their clients is restricted.

The time limit for meetings between attorneys and their clients, 30 minutes only, is unreasonable and infringes upon the right of detainees to legal representation, since attorneys, at times, require more than 30 minutes to receive from the detainees all the information needed to deal with their case, and to explain to the detainees their legal options and current situation.

In line with the Evidence Ordinance and the Bar Association Act, which codified into Israeli law attorney-client privilege, the regulation governing the operation of

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<sup>91</sup> Ibid.

<sup>92</sup> Regulation on the operation of the Ben Gurion Airport detention facility no. 10.7.0002, last updated on December 5, 2018. (Hebrew)

the Yahalom Facility stipulates that meetings with attorneys are to be carried out in a separate room, in conditions that guarantee the confidence of the meeting.<sup>93</sup> In reality, there is no room designated for meetings between detainees and their attorneys. Meetings between attorneys and their clients are carried out in the staff's kitchen, or in one of the two adjacent rooms, and are held while the door is open as employees of the facility come in and out of the room.

### Denial of Communication with the Outside World

Paragraph 5.5.14 of the internal regulation for management of Yahalom Facility stipulates that "the detainee will be entitled to use the public phone located at the facility once a day and for a reasonable amount of time."<sup>94</sup> The reality on the ground is strikingly different, and there is not consistency on the matter: some detainees manage to make phone calls daily from the facility, while others reported that although they repeatedly asked to leave their cell to use the facility's phone, they were told "later," and were not eventually allowed to make the call. Unlike detainees in other immigration facilities, those denied entry to Israel who are held in Yahalom are not given calling cards and have no access to commissary.

### Recommendations for safeguarding the rights of detainees in Yahalom

- Israeli authorities must allow oversight bodies, as well as representatives of human rights NGOs, to enter the facility.
- Authorities must ensure access to the Israeli asylum system in all detention facilities and border crossings. Those awaiting a response regarding their asylum claim should not be jailed.
- All wards in detention facilities and all border crossings should have forms for filing asylum applications, as well as information posters about the Israeli asylum system, the asylum determination process proceedings, and how to file the form.
- All those who wish to make a telephone call or purchase calling cards must have access to them. Israeli authorities must not block the detainees' contact with the outside world.

Photo by Yair Meyuhas

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<sup>93</sup> Ibid.

<sup>94</sup> Ibid.





- The regulation governing the administration of the Yahalom Facility must be amended to allow attorneys representing detainees to enter at all times of the day, without a time limit on their meetings.
- Specific rooms must be set aside for meetings between attorneys and their clients, in a manner that will protect attorney-client privilege and the privacy of the meeting.
- The regulation governing the operation of Yahalom Facility should be amended so that decisions concerning detention of those denied entry is examined within 96 hours by the Tribunal, similar to detainees arrested inside Israel.
- The detainees in the facility must be notified of their right to legal counsel, and their right to turn to Israeli courts with regards to their arrest and the State's intention to deport them from Israel.
- Authorities should hang, in all immigration detention facilities including Yahalom, signs in relevant languages that inform the detainees about their rights and the jurisdiction held by border control officers and Tribunal adjudicators before whom they appear.



Photo by Activestills

## *Brutality by Immigration Authority Inspectors*

Every year, we find ourselves reporting about new violent incidents in which Immigration Authority inspectors use violence against migrants, and how Israeli authorities fail to properly deal with these cases. In 2015, the HRM and the Association for Civil Rights in Israel published a report focused on the violent conduct of Immigration Authority inspectors. The report, entitled "Who Inspects the Inspectors," ended with a call for establishing an external review body.<sup>95</sup> In June 2017, the HRM addressed the Minister of Interior and Attorney General, requesting that they set a narrow and clear definition of the term "reasonable force," which inspectors are allowed to use during arrest of migrants, set clear mechanisms for preventing a conflict of interests, establish an external oversight body to oversee the work of the inspectors, set clear disciplinary rules, and develop a more extensive professional training program. Reminders about the appeal, in addition to documentation of new incidences of violence, were sent on February 7, 2019 and April 8, 2019. No response was received. The victims were not questioned by the Israeli Police, and those responsible were not held to account.

Despite repeated appeals to authorities calling for the establishment of an independent and impartial oversight body, to which victims could turn with complaints about violence at the hands of Immigration Authority inspectors, similar to such oversight bodies in the Israeli Police and IPS, until today such a body does not exist. Due to the absence of such an investigative body, the authority to deal with complaints on violations or violence by Immigration Authority inspectors rests with the Department of Internal Review and Complaints of the Public at the Immigration Authority, with the Department of Disciplinary Investigations at the Civil Service Commission, and with the Israeli Police.

During 2019, as in previous years, the HRM was made aware of cases when Immigration Authority inspectors used excessive force against detainees during deportation attempts of undocumented migrants in Israel. Two of the testimonies bolster each other, since they were collected separately from a man and a woman who were subjected to

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<sup>95</sup> The HRM and the Association for Civil Rights in Israel, "Who Inspects the Inspectors? On Violence of Immigration Inspectors toward Migrants," 2015. (Hebrew)

violence at the same time. P., a citizen of Nigeria, and G., also a citizen of Nigeria, who reached Israel on the same flight on February 22, 2019. The two attempted to apply for political asylum in Israel, and due to their refusal to return to their homeland, they were subjected to violence that cannot be deemed "reasonable."

P. reported to an attorney of the HRM in a sworn affidavit: "the representatives of the Immigration Authority removed everyone from the bus by force. They grabbed one of the men by the neck, dragged him off the bus and put him on the plane. In addition, I saw that two of the men who were with me were hurt badly and were bleeding. They also used force against G., the woman who was with us. They grabbed her and tried to put her on the plane using force. She screamed and cried all the time."<sup>96</sup>

According to G. "from the office, they put me and the five men on the bus using force... when we reached close to the plane, they started pulling all of us out of the bus by force. I saw how they beat and dragged out the men using force. I saw that two of them were bleeding from the head. They removed me by force too. I tried to resist all the time. I grabbed anything I could. Every time I resisted, they used force. They grabbed my hands and legs. I cried and screamed the whole time. At some point, they brought me back to the bus and didn't put me on the plane."<sup>97</sup>

While P. and G. were subjected to the violence of inspectors during an attempt to deport them from Israel, R., an asylum seeker from Ethiopia whose asylum claim was rejected, endured beatings and humiliation at the hands of Immigration Authority inspectors during her arrest, over a decade after arriving in Israel. R. was arrested during a routine inspection by the Immigration Authority at an office where she worked as a cleaner. She hid in the bathroom from the inspectors, which they barged into searching for her. "The inspectors dragged me from the stall. They grabbed me by force, tied my hands behind my back while shoving my face against the wall and door. I started bleeding due to the beatings, from my head and hand. I cried and screamed and asked them to stop," R. recounted. She was brought to a facility of the Immigration Authority in Beit Dagan, where she described that "they did a hearing for me, and kept asking me why I'm working. There were three inspectors in the room. I explained to them that I'm working because I need to help my family. They yelled at me that we procreate like cockroaches."

R. showed the director of the facility, Galit Ben Shmuel, the marks left by the

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<sup>96</sup> From the affidavit of P., dated February 27, 2019, made before Adv. Alaa' Khater of the HRM.

<sup>97</sup> From the affidavit of G., dated February 27, 2019, made before Adv. Alaa' Khater of the HRM.

inspectors' violent treatment, and the official told her "it'll pass." The inspectors were angry that she complained about them and cursed at her, "your mother's c\*\*\*" and "trash." According to her, the director arrived again and asked why she would not sign the document. R. told the director that she wanted to understand what the document said. The director told R., "sign. It is the law that you have to sign." Then the director told the inspectors "if she doesn't sign, take her to prison with the children" R. stated in her affidavit that she: "thought they'll separate me from my children. The experiences I've had at the Ministry of Interior because of my residence without a visa were intolerable. I thought I was going to kill myself and end my life."<sup>98</sup>

It is important to note that R. felt so threatened by the Immigration Authority inspectors that she only agreed to provide the affidavit after knowing that her request to immigrate to Canada has been accepted and the date of her flight was known to her. Even then, R. only allowed the HRM to use her affidavit after her departure from Israel.

### Recommendations to Prevent Violence by Inspectors

- A regulation should be promulgated on the process of calling in a police investigator in cases when the detainee or his attorney turn to the IPS asking to file a complaint due to brutality of Immigration Authority inspectors, and to ensure that the detainee can file the complaint before he or she is deported from Israel. A regulation that narrowly and explicitly defines what is "reasonable force" should be issued, as well as clear disciplinary rules.
- Authorities should create an effective mechanism, which maintains the privacy of those who turn to it, to allow migrants to file complaints to the police with regards to violence exercised against them during their detention or after it, and before they are deported from Israel.
- An independent investigative body should be established to address cases of brutality by Immigration Authority inspectors, similar to bodies that exist today in the Israeli Police and IPS. Mechanisms should be put in place to ensure the body is impartial and does not have any conflicts of interest.

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<sup>98</sup> From an affidavit of R., dated November 19, 2019, to Adv. Inbar Barel of the HRM.



## *Summary and Recommendations*

As mentioned in the forward to this report, as part of our monitoring of detention conditions, in 2019 we chose to highlight certain themes: the detention of women and children ahead of deportation and absence of alternatives to detention of children; failings in the functioning of the Tribunals; failings pertaining to the detention of those denied entry: the denial of access to asylum, the denial of the right to legal counsel and attorney-client privilege, preventing contact with the outside world while detained at the Yohalem Facility; and the failure of authorities to address brutality cases by Immigration Authority inspectors.

Most of the detainees in immigration detention facilities this year were undocumented: migrants and tourists whose visas had expired, those who violated the conditions of their visa, and those denied entry. Due to the closing of the Holot Facility and the voiding of the plan to deport asylum seekers to "third countries", there was a sharp drop in the number of asylum seekers held in immigration detention in 2019 as compared to past years. According to guidelines of the UN High Commissioner for Refugees (UNHCR): "detention is an extraordinary measure that can only be justified for a legitimate goal."<sup>99</sup> However, the policy of the Israeli government for over a decade has been to detain and jail asylum seekers and migrants for prolonged periods, even when their deportation is not possible. We provided our recommendations on the various topics at the end of each chapter. The HRM's central recommendation is to avoid detention of migrants and asylum seekers, particularly children, and instead to resort to alternatives that are more efficient and humane, as well as less costly.

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<sup>99</sup> UNHCR, "Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention", 2012.

